MONTANA LEGISLATIVE HISTORY

Chapter 431 1975

Bill H 469 S _____ Original bill & history ✓ C

H. Committee on Business & Industry			S. Committee on Business & Industry		
Hearing Date(s)	Feb 12	✓ C	Hearing Date(s)	Feb 28	— C
		C	No minutes were found re date action was taken		C
		C			C
		C			C
Date Out	Feb 17	✓ C			

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

LC 0808

House BILL NO. 469

INTRODUCED BY Committee on Business & Industry

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE CODIFICATION AND GENERAL REVISION OF THE LAWS RELATING TO THE DEPARTMENT OF BUSINESS REGULATION."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 5-109, R.C.M. 1947, is amended to read as follows:

"5-109. Definition of words and terms. Unless the context requires otherwise, in this act:

~~(a)--The--terms--capital,--capital--stock--or---paid-in capital~~ (1) "Capital," "capital stock," and "paid-in capital" mean that fund for which certificates of stock are issued to stockholders ~~in--case-of-incorporated-banks-and that-fund-set-aside-and-dedicated-for--capital--purposes--in case-of-private-banks.~~

~~(b)--The--term--"surplus"~~ (2) "Surplus" means a fund paid in or created ~~pursuant-to-the-provisions-of~~ under this act by a bank from its net earnings or undivided profits, which when set apart and designated as such, is not available for the payment of dividends and cannot be used for the payment of expenses or losses so long as such bank has undivided profits.

~~(c)--The-term-"undivided~~ (3) "Undivided profits" means the credit balance of the profit and loss account of ~~any~~ a bank.

~~(d)--The-term-"profit~~ (4) "Profit and loss account" or "profit and loss" means that account carried on the books of the bank into which all earnings accounts and recoveries are closed, thus exhibiting "gross earnings" and against which all loss and other disbursement items are charged revealing "net earnings" which are then properly closed to "undivided profits accounts" or "undivided profits," out of which dividends are paid and reserves set aside.

~~(e)--The-term-"net~~ (5) "Net earnings" means the excess of the gross earnings of ~~any~~ a bank over expenses and losses chargeable against ~~such~~ those earnings during any one year.

~~(f)--The--term--"time~~ (6) "Time deposits" means all deposits, the payment of which cannot legally be required within thirty (30) days.

~~(g)--The--term-"demand~~ (7) "Demand deposits" means all deposits, the payment of which can legally be required when demanded.

~~(h)--The---words--"consolidate"~~ (8) "Consolidate" and "merge" ~~shall-be-deemed-to~~ mean the same thing and may be ~~so~~ used interchangeably in this act. ~~without-loss-of-power.~~

~~(i)--The-word-"superintendent"-wherever-it--appears--in this--act--shall-be-deemed-to-mean-"superintendent-of-banks"~~

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~~or "state superintendent of banks" of the state of Montana;~~

(9) "Department" means the department of business regulation provided for in Title 82A, chapter 4.

(10) "Board" means the state banking board provided for in section 82A-407."

Section 2. Section 5-202, R.C.M. 1947, is amended to read as follows:

"5-202. Presentation of articles to ~~superintendent of banks~~ department of business regulation -- secretary of state to issue certificate -- when body corporate. ~~Thereupon the~~ The articles of agreement shall be presented to the ~~superintendent of banks~~ department of business regulation, together with an application in writing in the form prescribed by the ~~superintendent of banks~~ department for a certificate authorizing the proposed corporation to transact within this state the business specified ~~therein~~ in the articles of agreement. Upon the presentation of the articles of agreement, together with ~~such~~ the application, the ~~superintendent of banks~~ department shall ~~examine or cause an examination to be made in order to~~ ascertain whether the requisite capital of ~~such~~ the bank has been subscribed and been paid up in cash. ~~He~~ It shall also determine whether the corporation is being formed for any other purpose than the legitimate business contemplated by this act, or whether the public convenience and advantage

will be promoted by the opening of ~~such~~ the bank~~;~~. ~~and~~ It shall determine whether the corporate name assumed by ~~such~~ the bank, by reason of the use ~~by it~~ of any one or more of the words "commercial," "trust," "savings," or "investment," in conjunction with any other word or words, resembles so closely ~~as to be likely to cause confusion;~~ the name of any other bank previously formed under this act as to be likely to cause confusion. ~~He~~ The department shall also ascertain from the best sources of information at ~~his~~ its command whether the character and general fitness of the persons named as stockholders ~~are such as to~~ command confidence of the community in which ~~such~~ the bank is proposed to be located. The expenses of the ~~superintendent of banks~~ department in making the examination required by this ~~act~~ section shall be paid by the proposed bank, and payment shall be made in advance if required by the ~~superintendent of banks~~ department. All information gathered by the department under this section shall be transmitted to the board for its use in conducting hearings on applications for certificates of authorization."

Section 3. There is a new section to be numbered 5-202.1, R.C.M. 1947, which reads as follows:

5-202.1. Board to refuse or approve application. The board may refuse or approve an application for a certificate of authorization in accordance with sections 5-607 through

5-614.

Section 4. Section 5-203, R.C.M. 1947, is amended to read as follows:

"5-203. ~~Superintendent of banks to approve or refuse application filing articles with secretary of state. If the superintendent of banks shall not be satisfied with the result of his investigation, he shall refuse the application within sixty (60) days after the articles of agreement and the application have been presented to him, and so notify the incorporators named therein. If the superintendent of banks shall be satisfied with the result of his investigation, he shall, within sixty (60) days after such application has been made to him, issue under his hand and official seal the certificate of authorization, required by this act, in duplicate.~~ Filing of certificate and articles of agreement. The articles of agreement, together with one of ~~such~~ the certificates of authorization, ~~so~~ issued, by the ~~superintendent of banks~~ department, shall be filed in the office of the clerk and recorder of the county in which is located the principal place of business of the proposed bank. ~~and a~~ A certified copy of the articles of agreement, together with the ~~other~~ certificate of authorization ~~issued by the superintendent of banks~~, shall be filed with the secretary of state. Upon filing with the secretary of state, the articles of agreement, and the certificate of

authorization, and paying the fee required for the filing of articles of incorporation, the secretary of state shall issue a certificate setting forth that ~~such~~ the corporation has been duly organized, the amount of its authorized and subscribed capital, and the business in which it is to engage. ~~and such~~ This certificate shall be taken by all courts of this state as evidence of the corporate existence of ~~such~~ the bank. The ~~person so~~ persons signing and acknowledging the articles of agreement, and their associates and successors, ~~shall thereupon become and be~~ are then a body corporate with power of continual succession, and by ~~such~~ that name they and their successors ~~shall be~~ are entitled to have, possess, and enjoy all the rights and privileges conferred by this act."

Section 5. Section 5-208, R.C.M. 1947, is amended to read as follows:

"5-208. Board of directors -- qualifications, tenure, and vacancies. The affairs of the bank shall be managed by a board of directors, not less than three (3) or more than eleven (11) in number, all of whom shall be stockholders of ~~such~~ the bank and citizens of the United States, and of whom at least two-thirds (2/3) must be residents of ~~the~~ this state ~~of Montana~~. ~~No~~ A person who ~~shall have~~ has been convicted of a crime against the banking laws of the United States or of any state ~~of the union shall~~ may not be elected

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a director. The directors shall be elected for a term of one (1) year at the annual meeting of the stockholders, which shall be held on the second Tuesday in January of each year. ~~In case~~ If the election ~~shall~~ is not ~~be made~~ held on the day fixed for the annual meeting, the corporation ~~shall~~ may not thereby be dissolved, but an election may be ~~had~~ held at any other time agreeable to the bylaws of the corporation, and the persons so elected shall hold their office until the second Tuesday ~~in~~ of the following January ~~following~~, or until others are elected and qualified. In case of death or resignation of one or more of ~~said~~ the directors, the vacancy shall be filled by the board, and the directors so appointed shall hold office until the next annual election~~,--at which time a director shall be elected to fill out the unexpired term~~. Every director shall take and subscribe an oath that he will diligently and honestly perform his duty in ~~such~~ the office, ~~and~~ that he will not knowingly violate or permit a violation of any of the provisions of this act~~,~~, and that he is the owner in good faith of the required number of shares of stock in the bank standing in his name on the books of the bank. ~~Such~~ The oaths shall be made in duplicate, one copy of which shall be transmitted to the ~~superintendent of banks~~ department and filed in ~~his~~ its office, and one copy shall be kept on file in the office of the bank."

Section 6. Section 5-210, R.C.M. 1947, is amended to read as follows:

"5-210. Selection of officers and employees -- meetings and minutes. The board of directors ~~shall have power to~~ may elect a president, one or more vice-presidents, cashier, and one or more assistant cashiers, and ~~such~~ other officers and employees ~~as~~ which they may from time to time ~~deem~~ consider to be to the best interest of the bank, and fix their compensation. The president and at least one vice-president shall be chosen from the board of directors. The board of directors shall also elect a secretary, who shall keep a correct report of the meetings of the board and of the stockholders in a book kept for that purpose, which minutes shall particularly disclose the date of the meetings and the names of the directors or stockholders present. This record of the meetings of the board of directors shall be subscribed to by the presiding officer and secretary. ~~Such~~ The minutes shall be read and approved at the ~~next succeeding~~ following meeting of the board of directors, and the minutes of ~~such next succeeding~~ the following meeting shall show ~~such~~ that fact. ~~Such~~ The minute-book shall be kept in the office of the bank at all times, and shall be presented to the ~~examiner~~ department at the time of ~~his~~ its examination of the books~~,~~. ~~and it shall be the duty of such examiner to~~ The department shall include in ~~his~~ its report

of examination of ~~such~~ the bank a statement of the dates on which ~~such~~ the meetings were held since the last examination of ~~such~~ the bank by ~~the examiner~~ it, and the names of the directors in attendance at each of ~~said~~ those meetings. The board of directors of a bank must hold a meeting at least once a month. ~~Any~~ A person who ~~shall make~~ makes a false entry in ~~said~~ the book, or who ~~shall change~~ changes or ~~alter any~~ alters an entry made ~~therein~~ in it, ~~shall be deemed~~ is guilty of a misdemeanor."

Section 7. Section 5-214, R.C.M. 1947, is amended to read as follows:

"5-214. Change of place of business and number of directors authorized. ~~Every~~ A bank ~~now organized and existing, or which may hereafter be organized,~~ may, upon approval of the ~~superintendent of banks~~ board, change its principal place of business from one place to another, in the same county, or in an adjacent county, within this state, and may increase or diminish the number of trustees or directors in the manner ~~hereinafter~~ provided in sections 5-215 through 5-217."

Section 8. Section 5-216, R.C.M. 1947, is amended to read as follows:

"5-216. Certificate of proceedings -- contents and effect. If, at the time and place specified in the notice provided for in ~~the last preceding~~ section 5-215,

stockholders ~~shall~~ appear in person or by proxy representing not less than two-thirds (2/3) of all the shares of stock of the corporation, and ~~shall~~ organize by choosing one of the trustees or directors chairman of the meeting, and also a suitable person for secretary, and proceed to a vote of those present in person or by proxy, and if, ~~on counting the votes, it shall appear that~~ two-thirds (2/3) of the ~~number~~ ~~of~~ votes representing all the outstanding capital stock have been cast in favor of increasing or diminishing the amount of capital stock, or of changing its corporate name, or of changing its principal place of business, a certificate of the proceedings showing a compliance with the provisions of this act, the amount of capital stock actually paid in, the whole amount of debts and liabilities of the corporation, the amount to which the capital stock shall be increased or diminished, or the change in the corporate name of the corporation, or the change in the principal place of business, shall be made out, signed, and verified by the affidavit of the chairman, and be countersigned by the secretary, and ~~such~~ the certificate shall be acknowledged by the chairman. ~~Said~~ The certificate shall then be sent to the ~~superintendent of banks, who~~ department which shall within thirty (30) days of ~~the~~ receipt ~~thereof,~~ either approve or reject the application for change. The action of the ~~superintendent of banks~~ department on ~~said~~ the

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application ~~shall be~~ is final. If ~~he~~ it approves the ~~same~~ ~~he~~ certificate it shall notify the bank ~~whereupon~~ at which time the certificate shall be filed in the office of the county clerk and recorder of the county ~~wherein~~ in which the bank is located and in the office of the secretary of state. Upon ~~such~~ the filing, the change ~~shall be~~ is effective."

Section 9. Section 5-217, R.C.M. 1947, is amended to read as follows:

"5-217. Change in number of directors -- procedure -- approval by ~~superintendent of banks~~ department. (1) ~~Any~~ A state bank or trust company may increase or diminish the number of its directors or may provide that the number of directors elected at each annual meeting, within the limits specified in this act, shall constitute the board for the year, with all vacancies to be filled by the board taking the action, and also may provide that a majority of the full board of directors may increase the number of the directors of the bank, not exceeding two (2) within the limits specified in this act, and appoint persons to fill the resulting vacancies between meetings of the stockholders by amending its articles of incorporation at any regular annual meeting, or at any special meeting called and noticed for that purpose, of the stockholders of the bank or trust company~~,~~. ~~provided that~~ However, the number of directors ~~shall~~ may not at any time be less than three (3) or more

than eleven (11).

(2) ~~Whenever any~~ When a bank or trust company ~~shall decide~~ decides to call a special meeting of the stockholders for the purpose of amending its articles of incorporation relative to the number of directors, written or printed notice of ~~such~~ the meeting must be deposited in the post office addressed to each stockholder of record entitled to vote at ~~such~~ the meeting under the articles of incorporation or amendments ~~thereto~~ to them, and the laws and constitution of Montana, at his last known place of residence at least ten days previous to the date set for the holding of ~~such~~ the meeting~~,~~. ~~and in~~ In addition, ~~said~~ the notice must be published once a week for two consecutive weeks in a newspaper published in the county ~~wherein~~ where the principal place of business of ~~such~~ the corporation is situated. If no newspaper is published in the county it ~~shall~~ is not be necessary to publish ~~said~~ the notice~~,~~. ~~provided, however, that~~ However, the matter of amending the articles of incorporation to change the number of directors may be submitted to and acted upon at any annual meeting of the stockholders without special notice. ~~thereof~~

(3) If at the time and place specified in the notice of ~~such~~ the special meeting or at the annual meeting of the stockholders, stockholders representing two-thirds (2/3) of all the shares of stock of the corporation ~~shall~~ appear in

person or by proxy and vote in favor of ~~such~~ the amendment, a certificate of the proceedings showing a compliance of the provisions of this act and the amendment relative to the number of directors shall be prepared, certified and sworn to and filed with the ~~superintendent of banks,~~ department. ~~who~~ The department shall, within thirty (30) days after the receipt ~~thereof~~ of the certificate, either approve or reject the amendment. The action of the ~~superintendent of banks~~ department on ~~said~~ the amendment ~~shall be~~ is final. If ~~he~~ it approves the ~~same, he~~ amendment, it shall notify the bank, whereupon the certificate with the ~~superintendent's~~ department's approval attached ~~thereto~~ to it shall be filed in the office of the county clerk and recorder of the county ~~wherein~~ in which the bank is situated, and a certified copy ~~thereof~~ of it shall be filed in the office of the secretary of state. Upon the filing of ~~such~~ the certified copy with the secretary of state, the amendment ~~shall become~~ becomes effective."

Section 10. Section 5-301, R.C.M. 1947, is amended to read as follows:

"5-301. Dissolution and disincorporation. Commercial banks, savings banks, trust companies, and investment companies ~~now organized and existing, or which may be hereafter organized,~~ may be dissolved in the manner provided by the laws of ~~Montana~~ this state applicable to the

dissolution of other corporations~~,~~. ~~except it shall be legal for any~~ However, a bank or trust company may, upon a vote of two-thirds (2/3) of its stockholders at a special meeting called for that purpose in accordance with ~~the~~ its bylaws, ~~of the bank,~~ to voluntarily quit business and liquidate upon the payment of its debts, exclusive of liability to stockholders, or upon agreement with all of its creditors to a plan of liquidation~~,~~. ~~any~~ A bank or trust company desiring to ~~thus~~ voluntarily liquidate~~,~~ shall ~~make application~~ apply to the ~~state superintendent of banks~~ department of business regulation for permission to so liquidate and, in addition to complying with the laws of ~~the~~ this state ~~of Montana~~ governing the liquidation of corporations, shall comply in all respects with the requirements or rules ~~and regulations~~ of the ~~state superintendent of banks~~ department governing ~~such~~ voluntary dissolution. The board of directors of ~~any~~ a bank, whose stockholders have voted to place it in voluntary liquidation, shall appoint a liquidating agent to wind up the affairs of ~~such~~ the bank. ~~Such~~ The liquidating agent, on authority of the board of directors, ~~shall have power to~~ may execute deeds for the transfer of real property and ~~to~~ do ~~any and~~ all things necessary to ~~effect~~ carry out the proper liquidation of ~~such~~ the bank. Nothing in this section ~~contained shall prevent~~ prevents the ~~state~~

~~superintendent-of-banks~~ department from taking charge at any time when in ~~his~~ its opinion the interest of creditors or stockholders is not being protected~~.~~ ~~the~~ The decision of the ~~superintendent-of-banks~~ department in ~~said~~ these matters ~~to-be~~ is controlling."

Section 11. Section 5-403, R.C.M. 1947, is amended to read as follows:

"5-403. Scope of term "liquidating officer" -- ~~superintendent-of-banks~~ department of business regulation to file inventory with district court -- report. The liquidating officer of a bank ~~shall-have-the-power-to~~ may decide when the assets of a failed bank are not sufficient to pay the debts, contracts, engagements and liabilities and he may determine the question of the time when and the court where necessary ~~suits~~ legal proceedings shall be ~~instituted~~ conducted, subject to the general provisions of law governing venue and place of trial. For the purposes of this section the term "liquidating officer" ~~shall-be-held-to-include~~ includes every person legally empowered to liquidate the business and affairs of a state bank whether the ~~same-be~~ liquidation is by the ~~superintendent---of---banks,---his~~ department of business regulation, its deputies and agents and also includes all receivers of state banks ~~now--or-hereafter~~ qualified to liquidate a state bank under any law of ~~Montana~~, this state. ~~provided,--however,--that--the~~ The

provisions of this ~~section-shall~~ chapter do not impose any liability on ~~any~~ a stockholder of a bank which is a member of the Federal Deposit Insurance Corporation. The ~~superintendent-of-banks~~ department shall, within ninety (90) days after taking charge of an insolvent bank, ~~cause--to--be-filed~~ file with the district court having jurisdiction~~,~~ a complete inventory of all of the property and assets of ~~such~~ the insolvent bank, such as furniture, fixtures, real estate, mortgages, bonds, and notes, secured and unsecured~~,~~ ~~and--thereafter--he~~ It shall also every six (6) months or ~~oftener~~ more often, if ~~so~~ required by the court, ~~cause-to-be-made-and-filed~~ file with the court a report showing the conditions of the liquidation of ~~such~~ the bank, the assets that have been liquidated and collected, ~~and~~ the amounts and manner of payments ~~which-may-have-been~~ made to creditors, ~~and~~ the manner in which claims have been handled, and ~~also-showing~~ the assets on hand. The report ~~to--also~~ shall contain ~~such~~ other information ~~as~~ the court ~~may-deem-proper-and-request-or-require~~ requires, so that the court and the public may be apprised of the condition of ~~such~~ the bank and the manner in which it is being liquidated with respect to the collection and sale of assets belonging to ~~such~~ the bank and the manner in which claims are being paid. ~~Such~~ The report and account shall be set for hearing upon ~~such~~ the notice ~~as~~ the court may require and if found to be correct

shall be approved by the court."

Section 12. Section 5-504, R.C.M. 1947, is amended to read as follows:

"5-504. Real estate which banks may purchase, hold or convey. (1) ~~Banks~~ A bank organized under the provisions of this act may purchase, hold, or convey real estate ~~as follows~~ which:

~~1.~~--(a) ~~Such---as--is~~ Is necessary for the proper transaction of its business, but it shall not invest an amount exceeding fifty per cent (50%) of its paid-up capital and surplus in the lot and building in which the business of the company is carried on, furniture, equipment and fixtures, vaults and safety vaults, and boxes necessary or proper to carry on its banking business~~;~~

~~2.~~--(b) ~~Such-as-is~~ Is mortgaged to it in good faith by way of security for loans previously made or moneys due to the corporations~~;~~

~~3.~~--(c) ~~Such-as-is~~ Is conveyed to it in satisfaction of debts previously contracted in the course of its business~~;~~

~~4.~~--(d) ~~Such--as--it~~ It purchases at sales under judgments, decrees, or mortgages held by the company.

(2) Real estate acquired in the manner set forth in ~~subdivisions 3~~ subsections 1(c) and ~~4~~ 1(d) ~~hereof--shall~~ of this section may not be held longer than ~~period of~~ five (5)

years from the date of acquisition, unless special written permission to do so ~~be~~ is granted by the ~~superintendent of banks~~ department of business regulation. ~~Said~~ The real estate ~~to~~ shall be carried on the books of the bank for an amount not greater than ~~the~~ its cost ~~thereof~~ to the bank, including costs of foreclosure and other expenses of acquiring title."

Section 13. Section 5-506, R.C.M. 1947, is amended to read as follows:

"5-506. Limitation on real estate loans. (1) ~~Any~~ A commercial bank organized under the laws of ~~the~~ this state ~~of--Montana~~ may make real estate loans, secured by first liens upon improved real estate, including improved farm land and improved business and residential properties and may purchase ~~any~~ an obligation so secured when the entire amount of ~~such~~ the obligation is sold to the bank. ~~Provided that,--the~~ The amount of ~~any such~~ the loan ~~hereafter made shall~~ may not exceed fifty ~~per centum~~ percent (50%) of the appraised value of the real estate offered as security, and ~~no such~~ the loan ~~shall~~ may not be made for a longer period than five (5) years, except that:

~~(1)~~--(a) ~~Any--such~~ The loan may be made in an amount not to exceed sixty ~~per--centum~~ percent (60%) of the appraised value of the real estate offered as security and for a term not longer than twenty (20) years if ~~such~~ the

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loan is secured by an amortized mortgage, deed of trust, or ~~other such~~ similar instrument, under the terms of which the installment payments are sufficient to amortize forty ~~per centum~~ percent (40%) or more of the principal of the loan within ~~a period of~~ not more than twenty (20) years; and

~~(2)~~--(b) ~~No such~~ A commercial bank ~~shall~~ may not make ~~such~~ those loans in an aggregate sum in excess of the amount of its capital stock paid in and unimpaired plus the amount of its unimpaired surplus or in excess of sixty ~~per centum~~ percent (60%) of the amount of its time and saving deposits, whichever is ~~the~~ greater.

(2) Loans made to finance the construction of residential or farm buildings and having maturities of not to exceed six (6) months, whether or not secured by a mortgage or a similar lien on real estate upon which the residential or farm building is being constructed, ~~shall~~ are not ~~be considered as~~ loans secured by real estate within the meaning of this ~~act~~ section, but shall be classed as ordinary commercial loans, ~~provided that no~~ A commercial bank ~~shall~~ may not invest in or be liable on any ~~such~~ of those loans in an aggregate amount in excess of fifty ~~per centum~~ percent (50%) of its actually paid-in and unimpaired capital.

(3) Loans made to establish rural or commercial businesses which are in whole or in part discounted or

loaned against as security by a federal reserve bank for any part of which a commitment ~~shall have~~ has been made by a federal reserve bank or in which ~~the Reconstruction Finance Corporation~~ an agency of the federal government co-operated or purchases a participation in, ~~shall~~ are not ~~be~~ subject to the restrictions or limitations of this ~~act~~ section upon loans secured by real estate, ~~provided any~~ A commercial bank in this state ~~shall~~ has from time to time ~~have~~ the same authority to make loans upon real estate ~~as~~ which may be given by acts of Congress ~~of the United States~~ or the federal reserve system to national banks or bank members of the federal reserve system.

~~(3)~~--(4) The ~~foregoing~~ limitations and restrictions ~~shall~~ imposed by this section do not prevent the renewal or extension of loans ~~heretofore~~ made before February 18, 1941, and ~~shall~~ do not apply to real estate loans which are insured under the provisions of any act of ~~the~~ Congress, ~~of the United States, and said~~ Those limitations and restrictions ~~shall~~ do not apply to the making, extension, or renewal of any loans ~~which are~~ made under subchapter II of the act of Congress, known as the Servicemen's Readjustment Act of 1944, or any amendment ~~thereof~~ or supplement ~~thereto, as to any part of such loans~~ to that act.

(5) ~~These provisions~~ This section, however, ~~shall~~ does not prevent ~~any~~ a bank from taking another and immediately

subsequent mortgage or deed of trust when it already holds a first mortgage or deed of trust ~~thereon~~ on ~~such~~ the real estate, ~~nor~~ or from accepting a second lien on real estate to secure the repayment of a debt previously contracted in good faith~~;~~. ~~nor shall it~~ These provisions do not prevent subsequent liens of any kind from being taken to secure the payment of a debt previously contracted in good faith, when, in the judgment of the directors of ~~such~~ the bank, ~~such~~ the subsequent liens are necessary further to secure the payment of any debts and save ~~such~~ the bank from loss~~;~~. ~~provided; the term "commercial~~ "Commercial bank" as used in this section~~; shall mean~~ means a bank organized to do only the business specified in sections 5-104 to ~~5-109~~ 5-107 ~~of this code; only~~."

Section 14. Section 5-508, R.C.M. 1947, is amended to read as follows:

"5-508. Business prohibited unless under ~~superintendent of banks~~ department -- use of certain words prohibited -- court may enjoin. ~~No~~ A person, firm, company, copartnership, or corporation, either domestic or foreign, not subject to the supervision of the ~~superintendent of banks~~ department, and not required by the provisions of this act to report to ~~him~~ it, and which has not received a certificate to do a banking business from the ~~superintendent of banks, shall~~ department may not advertise that he or it

is receiving or accepting money or savings for deposit, investment, or otherwise, and issuing notices or certificates of deposit therefor, or ~~shall make~~ use ~~of any~~ an office sign, at the place where ~~such~~ the business is transacted, having ~~thereon any~~ on it an artificial or corporate name, or other words indicating that ~~such~~ the place or office is the place or office of a bank or trust company, or that deposits are received there or payments made on check, or any other form of banking business~~;~~ transacted~~;~~. ~~nor shall any such~~ That person, or persons, firm, company, copartnership, or corporation, domestic or foreign, ~~make~~ may not use ~~of~~ or circulate ~~any~~ letterheads, bill-heads, blank notes, blank receipts, certificates, or circulars, or any written or printed or partly written and partly printed paper, whatever, having ~~thereon any~~ on them an artificial or corporate name or other word or words indicating that ~~such~~ the business is the business of a bank, savings bank, or trust or investment company~~;~~. ~~nor shall any such~~ That person, firm, company, copartnership, or corporation, or any agent of a foreign corporation, not having an established place of business in the state, may not solicit or receive deposits or transact business in the way or manner of a bank, savings bank, trust or investment company, or in ~~such~~ a ~~way or~~ manner ~~as to lead~~ which leads the public to believe that its business is that of a bank,

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savings bank, ~~trust~~, or investment company. ~~Nor shall any~~ A person, firm, company, copartnership, or corporation, domestic or foreign, not subject to the supervision of the ~~superintendent of banks~~ department, and not required by the provisions of this act to report to ~~him~~ it, and which has not received from the ~~superintendent of banks~~ department a certificate to do a banking business, ~~hereafter~~ may not transact business under ~~any~~ a name or title which contains the word "bank," "banker," "banking," "savings bank," "saving," "trust," "trustee," "trust company," or "investment company." ~~Any~~ A person, firm, company, copartnership, or corporation, domestic or foreign, violating ~~any~~ a provision of this section shall forfeit to the state one hundred dollars ($100) a day for every day or part ~~thereof~~ of a day during which ~~such~~ the violation continues. Upon ~~action brought~~ suit by the ~~superintendent of banks~~ department, the court may issue an injunction restraining ~~any such~~ that person, firm, company, copartnership, or corporation from further using ~~such~~ those words in violation of the provisions of this section, or from further transacting business in ~~such~~ a ~~way or~~ manner ~~as to lead~~ which leads the public to believe that its business is that of a bank, savings bank, trust, or investment company, during the pendency of ~~such~~ the action, and ~~for all time~~ permanently, and may ~~make such~~ enter any other order or

decree as equity and justice ~~may~~ require."

Section 15. Section 5-509, R.C.M. 1947, is amended to read as follows:

"5-509. Capital stock to be paid up -- action by ~~superintendent of banks~~ department -- certain advertising prohibited. ~~Every~~ A person, firm, company, copartnership, or corporation, domestic or foreign, advertising that he or it is receiving or accepting money or savings, and issuing notes or certificates of deposit ~~therefor~~ for them, or advertising that he or it is transacting the business of a bank, savings bank, or trust company, or making ~~the~~ use of ~~any~~ an office sign at the place where ~~such~~ the business is transacted, having ~~thereon any~~ on it an artificial or corporate name, or other words indicating that ~~such~~ the place or office is the place or office of a bank, savings bank, or trust company, or that deposits are received there or payments made on check or that interest is paid on deposits, or that certificates of deposit, either with or without interest, are being issued or that any other form of banking business is transacted, and ~~every~~ a person, firm, company, copartnership or corporation, domestic or foreign, ~~making use of~~ using or circulating any letterheads, bill-heads, blank notes, blank receipts, certificates, or circulars, or any written or printed, or partly written and partly printed paper whatever, having ~~thereon any~~ on it an

artificial or corporate name, or advertising that ~~such~~ the business is the business of a bank, savings bank, or trust company, must have the proper capital stock paid in and set aside for the purpose of transacting ~~such~~ that business, and must have received from the ~~superintendent of banks~~ department, as provided for in this act, a certificate to do a banking business. ~~Any~~ A person, firm, company, copartnership, or corporation, domestic or foreign, violating any provision of this section shall forfeit to the state one hundred dollars ($100) a day for every day or part ~~thereof~~ of a day during which ~~such~~ the violation continues. Upon action brought by the ~~superintendent of banks~~ department, the court may issue an injunction restraining ~~any such~~ a person, firm, company, copartnership, or corporation from further violating any provision of this section, and may ~~make such~~ enter a further order or decree as equity and justice ~~may~~ require. ~~Every~~ A person, firm, company, copartnership, or corporation doing any of the things or transacting any of the business defined in this section, must transact ~~such~~ that business according to the provisions of the Bank Act, and the ~~superintendent of banks or his deputy or examiners, shall have authority to~~ department may examine the accounts, books, papers, cash, and credits of ~~every such~~ that person, firm, company, copartnership, or corporation, domestic or foreign, in order

to ascertain whether ~~such~~ that person, firm, company, copartnership, or corporation has violated or is violating any provisions of this section."

Section 16. Section 5-519, R.C.M. 1947, is amended to read as follows:

"5-519. Obtaining property by fraud -- false report -- refusal to permit inspection of books. A director, officer, agent, or employee of ~~any~~ a bank who:

~~1.~~--(1) Knowingly receives or possesses himself of any of its property, otherwise than in payment for a just demand, and with intent to defraud, omits to make or to cause or direct to be made a full and true entry ~~thereof~~ of it in its books and account; or,

~~2.~~--(2) Concurs in omitting to make any material entry thereof; or,

~~3.~~--(3) Knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition, containing any material statement which is false; or,

~~4.~~--(4) Having the custody or control of its books, willfully ~~refused~~ refuses or neglects to make ~~any~~ a proper entry in the books of ~~such~~ that corporation as required by law, or to exhibit, or allow ~~the same~~ them to be inspected and extracts to be taken ~~therefrom~~ from them by the ~~superintendent of banks, his chief deputy, or any of his~~

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~~examiners, shall be~~ department, is guilty of a felony."

Section 17. Section 5-523, R.C.M. 1947, is amended to read as follows:

"5-523. Limitations on loans -- liabilities -- what included therein -- reduction when excessive. (1) The total loans to ~~any~~ a person, copartnership, or corporation by ~~any~~ a bank, including loans to a copartnership, and ~~loans~~ to the several members thereof, shall at no time exceed twenty ~~per centum~~ percent (20%) of the amount of the unimpaired capital and surplus of ~~such~~ that bank. The discount of bills of exchange drawn in good faith against actual existing values, the discount of bankers, acceptances of other banks, the discount of commercial or business paper actually owned by the person negotiating ~~the same~~ it, and the obligations of the United States or general obligations of any state or of any political subdivision thereof, or obligation issued under authority of the Federal Farm Loan Act, ~~shall~~ may not be considered as money borrowed. ~~nor shall the foregoing~~ The limitations imposed on total loans by this section do not apply to loans and investments secured by obligations of the United States having a value of one hundred ~~per cent~~ percent (100%) of the amount ~~thereof~~ loaned or invested or to loans made on warehouse receipts and bills of lading, when ~~such~~ the warehouse receipts and bills of lading cover nonperishable commodities of the marketable value of at

least one hundred twenty per cent (120%) of the amount loaned ~~thereon~~ on them. Loans or obligations ~~shall~~ are not be subject under this section to any limitation based upon ~~such~~ that unimpaired capital and surplus to the extent that they are secured or covered by guaranties, or by commitments or agreements to take over or to purchase ~~the same~~ them, made by ~~any~~ a federal reserve bank or by the United States or ~~any~~ a department, bureau, board, commission, or establishment of the United States, including ~~any~~ a corporation wholly owned directly or indirectly by the United States.

(2) The combined liabilities of the several members of ~~any~~ a firm, copartnership, or unincorporated association to the loaning bank shall be included in the liabilities of ~~such~~ the firm, copartnership, or unincorporated association. ~~and that~~ That portion of the liabilities of ~~such~~ the firm, copartnership, or unincorporated assocation for which a member ~~thereof~~ individually ~~shall be~~ is legally responsible shall be included in the liabilities of the member in determining the ~~foregoing~~ limitations imposed by this section. In determining the limitation for loans to a limited partner of a limited partnership, those portions of the liabilities of the limited partnership for which the limited partner is free from liability shall be excluded.

(3) When in the judgment of the ~~superintendent of~~

~~banks~~ department, the liabilities of ~~any~~ a corporation or the combined liabilities of ~~any~~ a corporation and one or more of its stockholders to ~~any~~ a bank are excessive, ~~he~~ it shall require the reduction ~~thereof~~ to ~~such~~ the limits and within ~~such~~ the time as ~~he shall prescribe~~ it prescribes."

Section 18. Section 5-532, R.C.M. 1947, is amended to read as follows:

"5-532. Reserve requirements. ~~Every~~ A bank, except a reserve bank, shall maintain at all times a reserve of ~~such~~ that percentage of its deposit liabilities as shall be determined by the ~~superintendent of banks~~ department as ~~hereinafter~~ provided in this section, of which reserve ~~such~~ a portion ~~as~~ the board of directors may determine may be on deposit in banks approved by the ~~superintendent of banks~~ department as reserve banks. The ~~superintendent of banks is authorized and empowered to~~ department may establish, raise, or lower ~~and to establish~~ reserves which shall be maintained on demand deposits and on time deposits as in ~~his~~ its judgment banking conditions may justify~~,~~. ~~provided such~~ The power to establish, raise, or lower ~~and to establish~~ reserves ~~shall be~~ is limited to a percentage of ~~such~~ deposits not in excess of reserve requirements which may be established ~~from time to time~~ for banks that are members of the federal reserve system ~~nor~~ and not less than seventy-five ~~per centum~~ percent (75%) of those reserve

requirements ~~which may be established from time to time~~ for ~~banks that are~~ members of the federal reserve system. A bank approved by the ~~superintendent of banks~~ department as a reserve bank must at all times maintain a reserve of ~~such~~ the percentage or percentages as the ~~superintendent of banks~~ department shall determine from time to time, which shall not be less than the percentages ~~hereinbefore~~ specified in this section of its deposit liabilities, of which ~~such~~ a portion ~~as~~ the board of directors may determine~~,~~ may be on deposit in banks approved by the ~~superintendent of banks~~ department as reserve banks. ~~Any~~ A solvent bank of good repute having a full paid-up capital and surplus of three hundred thousand dollars ($300,000), doing business in ~~the~~ this state ~~of Montana,~~ or any ~~of the states of the United States~~ other state, may be designated by the ~~superintendent of banks~~ department as a reserve agent for Montana ~~state~~ banking institutions. ~~Such~~ The approval or designation may be withdrawn or withheld at any time by the ~~superintendent of banks~~ department for cause. ~~Whenever~~ When the reserve of ~~any~~ a bank ~~shall fall~~ falls below the amount required ~~herein to be kept~~ by this section, ~~such~~ the bank ~~shall~~ may not increase its loans or discounts otherwise than by discounting or purchasing bills of exchange payable at sight or on demand, and the ~~superintendent of banks~~ department shall notify ~~any~~ a bank whose reserve may be below the

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amount ~~herein~~ required, to make good ~~such~~ the reserve. In arriving at deposit liabilities with regard to bank deposits, the net balance of amounts due to and from other banks shall be taken as the basis for ascertaining the deposit liability to banks against which reserves shall be carried~~,~~. ~~provided~~ However, a compliance with the federal reserve banking laws, rules and regulations by member banks shall be held to be a compliance with the reserve requirements and conditions of this act, and entitles those federal reserve member banks to the rights and privileges accruing from compliance with this act."

Section 19. Section 5-533, R.C.M. 1947, is amended to read as follows:

"5-533. Borrowed money. ~~No~~ A bank ~~shall~~ may not at any time become indebted either directly or indirectly for borrowed money or rediscounts in an amount in excess of its paid-up capital and surplus, without first obtaining written authority from the ~~superintendent of banks, provided, that debentures~~ department. Debentures or certificates of indebtedness issued by ~~any~~ an investment company to run for a period of three (3) years or more, ~~shall~~ may not be included in the deposit liabilities of ~~said~~ that investment company, as affected by the provisions of this section~~,--and entitle--such-federal-reserve-member-banks-to-the-rights-and privileges-accruing-from-a-compliance-with-this-act.~~"

Section 20. Section 5-604, R.C.M. 1947, is amended to read as follows:

"5-604. ~~Superintendent--of--banks~~ Director of business regulation and employees not to be interested in banks. Neither the ~~superintendent--of--banks~~ director of business regulation nor any bank examiner ~~shall~~ may be interested in or a borrower from any state bank, directly or indirectly."

Section 21. Section 5-607, R.C.M. 1947, is renumbered 82A-407, and is amended to read as follows:

"~~5-607~~-82A-407. State banking board-- composition -- terms -- allocation. (1) There is ~~hereby--created--and established-within-the-department-of-business--regulation~~ a state banking board.

(2) ~~Said~~ The board ~~shall-be~~ is composed of seven (7) members, ~~one-(1)-of-whom-shall-be~~ including the director of business regulation, who ~~shall--be~~ is the chairman of the board ~~and-shall-act-as-its-executive-officer~~. The remaining six (6) members of the board shall be appointed with consideration ~~being~~ given banks of small, medium and large size and to geographical distribution. ~~and-at~~ At least one (1) banker member and one (1) public member shall be appointed from each congressional district of the state. Two (2) of ~~said~~ the six (6) members shall be active officers in state banks of Montana, one (1) shall be an active officer of a national bank doing business in Montana and three (3)

shall be members of the public, none of whom shall be an officer, director or shareholder of any state or national bank.

(3) The members shall be appointed by the governor for terms of three (3) years. Vacancies shall be filled by appointment for the unexpired term. No member other than the director of business regulation may serve more than two (2) consecutive terms.

(4) The board is allocated to the department for administrative purposes only as provided in section 82A-108."

Section 22. Section 5-610, R.C.M. 1947, is amended to read as follows:

"5-610. Powers of board. The state banking board shall ~~have the following powers in addition to any others that hereafter may be granted to it by law:~~

(1) ~~to~~ make final determinations upon applications for ~~charters~~ certificates of authorization for new banks, mergers, consolidations, and relocations of banks;

(2) ~~to~~ act in an advisory capacity with respect to the duties and powers given by statute or otherwise to the director of business regulation as said duties and powers relate to banking."

Section 23. Section 5-611, R.C.M. 1947, is amended to read as follows:

"5-611. Rules adopted by board -- new banks. The board shall adopt rules ~~and regulations to the extent and in the manner as provided in~~ necessary for the administration of this act in accordance with the Montana Administrative Procedure Act [82-4201 to 82-4225]. ~~In addition, the board shall, in the manner provided in said act and as expeditiously as possible, adopt rules as it deems necessary and proper to implement its duties and powers.~~

In particular, the board shall ~~give priority to promulgation of~~ adopt rules concerning the ~~chartering~~ authorization of new banks. Such rules shall contain minimum standards under which an application for a new bank shall be determined~~. Such standards shall include~~ including the following:

(1) a persuasive showing that there is a reasonable public necessity and demand for a new bank at the proposed location;

(2) that the bank will be owned and managed by persons of good moral character and financial integrity, and will be safely and soundly operated;

(3) a persuasive showing that the new bank will have a sufficient volume of business to assure solvency and that establishment of the new bank will be in the public interest."

Section 24. Section 5-612, R.C.M. 1947, is amended to

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read as follows:

"5-612. Hearings -- notice -- intervenors. ~~In addition to the requirements of the Montana Administrative Procedure Act [82-4201 to 82-4225], the following shall be required:~~ (1) A hearing shall be conducted upon all applications for new bank ~~charters~~ certificates of authorization, ~~and all provisions of~~ in accordance with the Administrative Procedure Act [82-4201 to 82-4225] relating to a contested case shall be followed, whether or not any protest to the application is filed.

(2) A notice of the filing of an application for a new bank ~~charter~~ certificate of authorization shall be mailed to all banks within one hundred (100) miles of the proposed location, measured in a straight line.

(3) A hearing shall be conducted no sooner than thirty (30) days and not later than ninety (90) days following the mailing of such notice.

(4) Any bank filing a written protest with the board prior to the date of the hearing shall be admitted as a "party," as defined in the Administrative Procedure Act, with full rights of a party, including the right of subpoena of witnesses and written materials, the right of cross-examination, the right to have a transcript, and the right to receive all notices, copy of the application, all orders, and the right of judicial review and appeal.

(5) All applications for mergers, consolidations or relocations of banks shall likewise require a hearing, and all of the rights and procedures stated herein shall apply to these matters."

Section 25. Section 5-701, R.C.M. 1947, is amended to read as follows:

"5-701. Report to ~~superintendent of banks~~ department of business regulation. ~~Every~~ A bank shall make to the ~~superintendent of banks~~ department of business regulation regular call reports according to the form which may be prescribed by ~~him~~ the department, verified by oath or affirmation of the president, vice-president or cashier of ~~such~~ the bank and attested by the signature of at least two (2) of the directors other than the subscribing officer. Each ~~such~~ report shall exhibit in detail, and under appropriate schedules, the resources and liabilities of the bank at the close of business on any past day ~~by him~~ specified~~,~~ by the department. The report ~~and~~ shall be transmitted to the ~~superintendent of banks~~ department within five (5) days after the receipt of a request or requisition ~~therefor from him~~ for it, and in ~~such~~ a form ~~as~~ the department may ~~be required by the superintendent of banks, it~~ require. It shall be published as soon as possible in a newspaper published in the place where ~~such~~ the bank is established, or, if there be no newspaper in the place, then

in one published nearest ~~thereto~~ to that place in the same county, at the expense of the bank~~,. and-such-proof~~ Proof of the publication shall be furnished at ~~such~~ the times and in ~~such~~ the manner as may be required by the ~~superintendent--of banks~~ department."

Section 26. Section 5-702, R.C.M. 1947, is amended to read as follows:

"5-702. Report of declaration of dividend. In addition to the statement required by ~~the--preceding~~ section 5-701, ~~every--such~~ a bank shall report to the ~~superintendent-of banks~~ department within ten (10) days after declaring any dividend, showing the amount of ~~such~~ the dividend and the amount of net earnings in excess of the dividend. ~~Such~~ The statement shall be attested as provided for in the attestation of statement by ~~the-preceding~~ section 5-701."

Section 27. Section 5-703, R.C.M. 1947, is amended to read as follows:

"5-703. Special reports to ~~superintendent--of-banks~~ department. In addition to the information obtained from the report required by ~~the-provisions-of~~ section 5-701 ~~of--this code~~, the ~~superintendent-of-banks-shall~~ department may also ~~have-the-power-to~~ require ~~any~~ a bank to furnish a special report in writing, verified as required by section 5-701 ~~of this-code~~, ~~whenever~~ when in ~~his~~ its judgment ~~such~~ the special report is necessary to inform ~~him~~ it fully of the

actual financial condition and affairs of ~~such~~ the bank. ~~Any--wilful~~ A willfully false statement in the ~~premises shall be~~ report is perjury, and shall be punished ~~as--such~~ accordingly."

Section 28. Section 5-705, R.C.M. 1947, is amended to read as follows:

"5-705. Reports confidential -- false reports -- penalties. The report and any information contained in the reports and statements ~~hereinabove~~ provided for, other than ~~such~~ those reports ~~as~~ which are required to be published, shall be ~~deemed--to--be~~ considered secret and for the confidential information of the ~~superintendent--of-banks~~ department only~~,. and-such~~ The information ~~shall~~ may not be imparted to ~~any~~ persons who are not officially associated ~~in and~~ with the ~~office--of--the--superintendent--of--banks~~ department, and the information ~~therein~~ contained in them shall be used by the ~~superintendent-of-banks~~ department only in the furtherance of ~~his~~ its official duties~~,. except-that it--shall--be--lawful-for-the~~ The department ~~to~~ may exchange information with ~~the~~ federal banking ~~department~~ departments and with departments of other states and ~~to~~ furnish information to prosecuting officials who request ~~the-same~~ it for use in pursuit of official duties. ~~Any--superintendent of--banks--or--deputy,--assistant,-examiner,-or-clerk-in-his employ~~ An employee or agent of the department, who violates

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any of the provisions of this section, or willfully makes a false official report as to the condition of ~~any~~ a bank, shall be removed from office, and ~~shall~~ is also ~~be deemed~~ guilty of a felony~~.~~ ~~and upon~~ Upon conviction, ~~thereof~~ he shall be ~~punished by a fine of~~ fined not exceeding one thousand dollars ~~($1,000.00)~~ ($1,000), or ~~by imprisonment~~ imprisoned in the state penitentiary ~~for~~ not exceeding five (5) years, or ~~by~~ botn ~~such fine and imprisonment~~ fined and imprisoned."

Section 29. Section 5-801, R.C.M. 1947, is amended to read as follows:

"5-801. Assessment on capital stock to make good impairment. (1) ~~Whenever~~ When the ~~superintendent of banks shall determine~~ department of business regulation determines that an impairment of capital exists in ~~any~~ a bank, ~~he~~ it may, in ~~his~~ its discretion, notify the board of directors of ~~such~~ the bank by written notice that ~~such~~ the impairment exists, stating the amount thereof in dollars and percentage of the capital stock ~~thereof~~, and ~~he~~ it may, ~~if he deems it advisable~~ in its discretion, order ~~such~~ the board to make good ~~such~~ the impairment within ninety (90) days from date of ~~such~~ the notice.

~~1.~~ (2) The board of directors shall, upon receipt of notice, convene and pass a resolution reciting the receipt of ~~such~~ the notice of impairment and calling a special

meeting of the stockholders of the bank ~~for a day certain~~ in the manner provided in their bylaws.

~~2.~~ (3) The stockholders~~, when assembled as herein provided,~~ at the meeting shall pass a resolution reciting the facts of receipt of notice from the ~~superintendent~~ department, notice of impairment and notice of meeting, and assessing themselves by assessing the stock of record, payment of which assessment must be made within the time limit specified by the ~~superintendent of banks~~ department as provided in notice of impairment.

~~3.~~ (4) If there ~~be~~ is any stock remaining on which the assessment is not paid as ~~hereinabove~~ provided in this section, ~~the same~~ it or ~~such~~ a part ~~thereof~~ of it as is necessary to pay the assessment shall be sold by the board of directors, acting through the cashier or secretary ~~thereof~~ of the bank, at public or private sale, as appears best for all concerned, ~~on a day certain,~~ not less than thirty (30) days after the day fixed for payment of assessment ~~hereinabove provided.~~ ~~notice~~ Notice of the time and place of ~~which~~ the sale shall be given by registered mail to the stockholders by the board through its cashier or secretary at least ten (10) days prior to the ~~date thereof, and such sales~~ sale. A sale of stock as ~~herein~~ provided in this section ~~for shall effect~~ causes an absolute cancellation of the outstanding certificate or certificates

evidencing the stock so sold, and ~~shall make the same null and~~ makes them void in the hands of the ~~stockholders~~ stockholder, his assigns or pledgees~~;~~. ~~and a~~ A new certificate shall be issued by the bank to the purchaser ~~thereof;~~ for the number of shares purchased, and a new certificate issued to the stockholder of record and delivered to him or any pledgee or assignee ~~thereof~~ of the stock for the remaining shares, if any~~;~~. ~~and the~~ The record of the original certificate sold shall be marked canceled on the books of the bank and ~~such~~ that record ~~thereof shall be~~ is prima facie evidence of the regularity of the proceedings for the sale of ~~said~~ the stock.

~~4;~~ (5) If ~~any~~ a bank fails to make good its capital impairment upon demand of the ~~superintendent of banks~~ department, as provided ~~herein~~ in this section, the ~~superintendent of banks~~ department may ~~forthwith~~ immediately take charge of ~~such~~ that bank and proceed to liquidate ~~its~~ it as in case of insolvency.

(6) If the ~~said~~ stock does not sell for ~~sufficient~~ enough to pay the assessment ~~thereon~~ on it, the board of directors may ~~proceed by suit~~ sue in the name of the corporation to collect the deficiency from the record holder~~;~~ whose stock has been ~~thus~~ sold for the assessment."

Section 30. Section 5-901, R.C.M. 1947, is amended to read as follows:

"5-901. Examination and supervision. The ~~superintendent of banks~~ department of business regulation shall exercise a constant supervision~~;~~ ~~either personal or through the examiners herein provided for;~~ over the books and affairs of all banks doing business ~~within the~~ in this state. ~~of Montana;~~ ~~and~~ It shall~~;~~ ~~through the examiners;~~ ~~visit~~ examine, at least once a year, each of ~~said~~ those banks~~;~~ and verify the assets and liabilities of each, and so far investigate the character and value of the assets of each as to ascertain with reasonable certainty that the values are correctly carried on the books. ~~He~~ It shall further investigate the methods of operation and conduct of business of ~~said~~ the banks and their systems of accounting, to ascertain whether ~~such~~ the methods and systems are in accordance with law and sound banking principles. ~~He~~ It may examine~~;~~ ~~or cause to be examined by the examiners;~~ ~~on~~ under oath, any of the officers, directors, agents, clerks, customers, or depositors of ~~any~~ a bank ~~touching~~ regarding the affairs and business thereof~~;~~. ~~and~~ It may, in the performance of ~~his~~ its official duties, issue~~;~~ ~~or cause to be issued by himself or the examiners~~ subpoenas~~;~~ and administer~~;~~ ~~or cause to be administered by the examiners;~~ oaths~~;~~. ~~provided;~~ ~~that in~~ In case of ~~any~~ a refusal to obey ~~any~~ a subpoena issued by ~~him~~ it ~~or under his direction, such~~ the refusal may at once be reported to the district court of

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the district in which the bank is located, and ~~such~~ the court shall enforce obedience to ~~such~~ the subpoena in the manner provided by law for enforcing obedience to the process of ~~said~~ the court. In all matters relating to ~~his~~ its official duties, the ~~superintendent of banks shall have~~ department has the same power possessed by courts of law to issue subpoenas, and ~~cause~~ have them ~~to be~~ served and enforced~~.~~ ~~and all~~ All officers, directors, agents and employees of banks doing business under ~~the provisions of~~ this act, and all persons having dealings with or knowledge of the affairs or methods of ~~any such institution~~ a bank, shall at all times afford reasonable facilities for ~~such~~ the examinations, and make ~~such~~ returns~~,~~ and reports to the ~~superintendent of banks~~ department as ~~he~~ it may require~~.~~ They shall also attend hearings and answer under oath ~~his lawful~~ the department's inquiries, produce and exhibit ~~such~~ any books, accounts, documents and property ~~as he may desire~~ it desires to inspect, and in all things aid ~~him~~ it in the performance of ~~his~~ its duty."

Section 31. Section 5-910, R.C.M. 1947, is amended to read as follows:

"5-910. Special examinations and fees. Special examinations may be made of ~~any~~ a bank, trust company, investment company, building and loan association, or credit union when in the judgment of the ~~superintendent of banks~~

department it ~~shall be deemed~~ is considered necessary, and ~~such~~ the special examination shall be charged for at the rate of one hundred dollars ($100) a day for each person engaged in the examination. All special examination fees or charges shall be paid at the conclusion of the examination and the moneys ~~so~~ collected by the ~~state examiner and ex officio superintendent of banks~~ department shall be paid to the state treasurer, for the credit of the general fund."

Section 32. Section 5-1002, R.C.M. 1947, is amended to read as follows:

"5-1002. Change from state to national bank. Any bank may become a corporation for the purpose of carrying on the business of banking ~~within~~ in this state, ~~pursuant to~~ under the ~~provisions of the~~ act of Congress "to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, 1864, and of Title 52 of the Revised Statutes of the United States, ~~whenever~~ when stockholders owning two-thirds (2/3) of the stock of ~~such~~ the bank ~~shall~~ have voted to become such corporation, or have executed a written consent authorizing its directors to make the certificate required therefor by the laws of the United States, or ~~whenever~~ when a majority of the directors of ~~such~~ the bank, having been authorized in their discretion to make the change, shall, by a vote of ~~such~~ the majority, decide to

become such corporation~~.~~ ~~and the~~ The cashier of ~~such~~ the bank shall publish notice thereof for thirty (30) days in ~~such~~ the newspaper ~~as~~ which the directors ~~may~~ select, and send a like printed notice by mail or otherwise to all nonvoting or dissenting stockholders, and notify the ~~state bank examiner of this state~~ department of business regulation that ~~such~~ the bank has decided to become a corporation under the laws of the United States."

Section 33. Section 5-1012, R.C.M. 1947, is amended to read as follows:

"5-1012. Information obtained by ~~state examiner to be deemed~~ department confidential -- penalty for the violation thereof. Any knowledge or information gained or discovered by the ~~state superintendent of banks~~ department in pursuance of ~~his~~ its powers or duties ~~as herein prescribed shall be deemed~~ is confidential information of the ~~state examiner's office only and such~~ department. The information ~~shall~~ may not, except as ~~herein~~ provided in this section, be imparted to any person ~~or persons who are~~ not officially associated ~~in and~~ with the ~~office of the state examiner and such~~ department. The information shall be used by the ~~state examiner~~ department only in the furtherance of ~~his~~ its official duties, except that ~~it shall be lawful for~~ the department ~~to~~ may exchange information with ~~the~~ federal banking department and departments of other

states and ~~to~~ may furnish information to prosecuting officials who require ~~the same~~ it for use in pursuit of official duties. ~~Any state examiner or deputy, assistant, or clerk in his employ,~~ An employee or agent of the department who violates ~~any of the provisions of~~ this section, or willfully makes a false official report as to the condition of ~~any~~ a bank, shall be removed from office, and ~~shall~~ is also ~~be deemed~~ guilty of a felony~~.~~ ~~and upon~~ Upon conviction ~~thereof~~ he shall be ~~punished by a fine of~~ fined not exceeding one thousand dollars ~~($1,000.00)~~ ($1,000), or ~~by imprisonment~~ imprisoned in the state penitentiary ~~for~~ not exceeding five (5) years, or ~~by~~ both ~~such fine and imprisonment~~ fined and imprisoned."

Section 34. Section 5-1018, R.C.M. 1947, is amended to read as follows:

"5-1018. ~~Superintendent~~ Department to make rules ~~and regulations~~. The ~~superintendent of banks shall have the power to~~ department may adopt ~~and promulgate~~ uniform rules ~~and regulations~~ to govern the examination and reports of banks and prescribe the form in which ~~such~~ banks shall report their assets, liabilities, and reserves."

Section 35. Section 5-1019, R.C.M. 1947, is amended to read as follows:

"5-1019. Special examination defined. ~~Any~~ An examination made by the ~~superintendent of banks~~ department

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otherwise than in the ordinary routine of the department, and because in ~~his~~ its opinion the condition of the bank requires ~~such~~ the examination, and ~~every~~ an examination made at the request of the board of directors or stockholders of ~~any~~ a bank, ~~shall be deemed~~ is a special examination."

Section 36. Section 5-1024, R.C.M. 1947, is amended to read as follows:

"5-1024. Conversion of surplus and undivided profits to capital. A bank having a surplus and undivided profits equal to or in excess of fifty ~~per centum~~ percent (50%) of its capital stock, may increase its capital stock by the issuance of new stock for a part of ~~said~~ that surplus and undivided profits. ~~Said~~ The increase may be made by the vote of two-thirds (2/3) of the stock in person or by proxy, either at a regular annual stockholders' meeting or at a meeting called for ~~said~~ that purpose in accordance with the bylaws of the corporation. All increases of capital stock made under this section must be accomplished in ~~such~~ a manner ~~as to conform~~ conforming to the requirements of this act ~~as~~ pertaining to surplus of banks when first incorporated. New capital stock when issued by a bank against its surplus and undivided profits may be issued without the payment of cash ~~therefor~~ for it, but ~~the same~~ it shall be charged upon the books of the bank and in the statements ~~thereof~~ of the bank against surplus and undivided

profits ~~in such a manner~~ so that the combined capital, surplus and undivided profits ~~shall~~ are not ~~be~~ reduced by the issuance of ~~said~~ the new stock. ~~Whenever~~ When a bank ~~shall have~~ has voted to issue any stock as contemplated in this section, it shall certify ~~such~~ that action to the ~~superintendent of banks~~ department, ~~who~~ which shall within thirty (30) days, approve or reject the plan. ~~His~~ Its action shall be final and written notice ~~thereof~~ of it shall be given to the bank. If the ~~superintendent of banks~~ department approves of the issuance of ~~said~~ the new stock and so notifies the bank, ~~it~~ the bank shall ~~thereupon~~ then file a certificate ~~thereof~~ of issuance with the county clerk and recorder of the county ~~wherein~~ in which the bank is located and with the secretary of state ~~of the state of~~ Montana. Upon ~~said~~ the filing with the secretary of state, the increase ~~shall become~~ becomes effective."

Section 37. Section 5-1037, R.C.M. 1947, is amended to read as follows:

"5-1037. Borrowing money -- limitations. ~~No~~ A bank ~~shall~~ may not borrow money, except to meet its seasonal requirements or unexpected withdrawals. ~~Provided, that at~~ At no time shall the bills payable and rediscounts of ~~any~~ a bank be permitted to exceed in the aggregate an amount equal to the capital and surplus of ~~such~~ the bank, except with the written consent of the ~~superintendent, first had and~~

~~obtained~~ department. ~~Whenever~~ When it ~~shall appear~~ appears to the ~~superintendent~~ department that a bank is borrowing money in excess of the ~~above~~ limitation provided by this section, or for the purposes other than as specified ~~above~~ in this section, ~~he~~ the department may require it to reduce ~~such~~ the borrowing within a time to be fixed by ~~him~~ the department."

Section 38. Section 5-1058, R.C.M. 1947, is amended to read as follows:

"5-1058. Definitions. As used in ~~this act~~ sections 5-1059 through 5-1062, unless the context otherwise requires:

~~(1) "Commissioner" means the officer of this state designated by law to exercise supervision over banks, and any other person lawfully exercising such powers.~~

~~(2)~~--(1) "Bank" includes commercial banks, savings banks, trust companies, any person or association of persons lawfully carrying on the business of banking, whether incorporated or not, and to the extent that the provisions ~~hereof~~ of sections 5-1059 through 5-1062 are not inconsistent with and do not infringe upon paramount federal law, also includes national banks.

~~(3)~~--(2) "Officers" means the person or persons designated by the board of directors, board of trustees, or other governing body of a bank, to act for the bank in

carrying out the provisions of ~~this act~~ sections 5-1059 through 5-1062 or, in the absence of ~~any such~~ a designation or of the officer or officers ~~so~~ designated, the president or any other officer currently in charge of the bank or of the office or offices ~~in question~~ involved.

~~(4)~~--(3) "Office" means any place at which a bank transacts its business or conducts operations related to its business.

~~(5)~~--(4) "Emergency" means any condition or occurrence which may interfere physically with the conduct of normal business operations at ~~one or more or all~~ any of the offices of a bank, or which poses an imminent or existing threat to the safety or security of persons or property, or both. Without limiting the generality of the foregoing, an emergency may arise as a result of any ~~one or more~~ of the following: fire; flood; earthquake; hurricanes; wind, rain, or snowstorms; labor disputes and strikes; power failures; transportation failures; interruption of communication facilities; shortages of fuel, housing, food, transportation or labor; robbery or attempted robbery; actual or threatened enemy attack; epidemics or other catastrophes; riots, civil commotions, and other acts of lawlessness or violence, actual or threatened."

Section 39. Section 5-1059, R.C.M. 1947, is amended to read as follows:

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"5-1059. Power of ~~commissioner~~ department. ~~Whenever~~ When the ~~commissioner~~ department is of the opinion that an emergency exists, or is impending, in this state or in any part ~~or--parts~~ of this state, ~~he~~ it may, by proclamation, authorize banks located in the affected area ~~or--areas~~ to close any ~~or--all~~ of their offices. In addition, if the ~~commissioner~~ department is of the opinion that an emergency exists, or is impending, which affects, or may affect, a particular bank or banks, or a particular office or offices thereof, but not banks located in the area generally, ~~he~~ it may authorize the particular bank or banks, or office or offices so affected, to close. The office or offices so closed shall remain closed until the ~~commissioner~~ department proclaims that the emergency has ended, or until such earlier time as the officers of the bank determine that one or more offices, theretofore closed because of the emergency, should reopen, and, in either event, for such further time thereafter as may reasonably be required to reopen."

Section 40. Section 5-1060, R.C.M. 1947, is amended to read as follows:

"5-1060. Powers of officers. ~~A.~~ (1) ~~Whenever~~ When the officers of a bank are of the opinion that an emergency exists, or is impending, which affects, or may affect, ~~one or--more-or-all~~ any of a bank's offices, they ~~shall-have-the~~

~~authority~~ may, in the reasonable and proper exercise of their discretion, ~~to~~ determine not to open any ~~one-or-more or-all~~ of ~~such~~ those offices on any ~~business-or~~ banking day or, if having opened, to close any ~~one-or-more-or-all~~ of ~~such~~ those offices during the continuation of ~~such~~ the emergency, even if the ~~commissioner~~ department has not issued and does not issue a proclamation of emergency. ~~The~~ An office ~~or--offices~~ so closed shall remain closed until ~~such-time-as~~ the officers determine that the emergency has ended, and for ~~such~~ a further time thereafter as may reasonably be required to reopen~~.~~. ~~however~~ However, in no case shall ~~such~~ an office ~~or-offices~~ remain closed for more than forty-eight (48) consecutive hours, excluding other legal holidays, without requesting the approval of the ~~commissioner~~ department.

~~B.~~--(2) The officers of a bank may close any ~~one--or more--or--all~~ of the bank's offices on any day ~~or-days~~ designated, by proclamation of the president of the United States or the governor of this state, as a day ~~or-days~~ of mourning, rejoicing, or other special observance."

Section 41. Section 5-1061, R.C.M. 1947, is amended to read as follows:

"5-1061. Notice to ~~commissioner~~ department. A bank closing an office ~~or-offices-pursuant-to-the~~ under authority granted under section ~~3--(A)-[5-1060--(A)]--of--this--act~~

5-1060(1) shall give as prompt notice of its action as conditions will permit and by any means available, to the ~~commissioner~~ department, and in the case of a national bank, to the comptroller of the currency."

Section 42. Section 5-1062, R.C.M. 1947, is amended to read as follows:

"5-1062. Effect of closing. (1) ~~Any~~ A day on which a bank, or any ~~one or more~~ of its offices, is closed during ~~all or~~ any part of its normal banking hours ~~pursuant to the authorization granted~~ under ~~this act shall be,~~ sections 5-1059 and 5-1060 with respect to ~~such~~ that bank or, if not all of its offices are closed, then with respect to ~~any~~ the office or offices which are closed, a legal holiday for all purposes with respect to any banking business ~~of any character~~. No liability, or loss of rights of any kind, on the part of ~~any~~ a bank, or director, officer, or employee thereof, ~~shall~~ may accrue or result by virtue of ~~any~~ a closing authorized by ~~this act~~ sections 5-1059 and 5-1060.

(2) The provisions of ~~this act~~ sections 5-1058 through 5-1062 ~~shall be construed and applied as being~~ are in addition to any other law of this state or of the United States, authorizing the closing of a bank or excusing the delay by a bank in the performance of its duties and obligations because of emergencies or conditions beyond the bank's control, or otherwise."

Section 43. Section 5-1101, R.C.M. 1947, is amended to read as follows:

"5-1101. Grounds for closing bank. (1) ~~Whenever~~ When it ~~shall appear~~ appears to the ~~superintendent of banks~~ department of business regulation that:

~~(1)~~--(a) ~~Any~~ A bank has willfully violated its charter or ~~any~~ a law of this state; ~~or~~

~~(2)~~--(b) ~~Has~~ A bank has willfully violated ~~any~~ a general rule ~~or regulation~~ of the ~~superintendent~~ department, made in accordance with law; ~~or~~

~~(3)~~--(c) ~~That the~~ The capital of ~~any~~ a bank is impaired or for any reason is below the amount required by law and has not been made good after notice, as provided by law, or without ~~such~~ that notice, in event a majority of the board of directors of ~~such~~ the bank notify the ~~superintendent~~ department in writing that the ~~same~~ impairment cannot be made good; ~~or~~

~~(4)~~--(d) ~~That such~~ A bank cannot meet or has failed to meet its liabilities ~~or any of the same~~, as they become due in the regular course of business; ~~or~~

~~(5)~~--(e) ~~That its~~ A bank's reserve has fallen below the amount required by law and it has failed to make good ~~such~~ that reserve within thirty (30) days after being requested to do so by the ~~superintendent~~ department, or, without ~~such~~ that notice, if a majority of the directors, in

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writing, notify the ~~superintendent~~ department that ~~such~~ the reserve cannot be made good within thirty (30) days, or if it is continually allowing its reserve to fall below the required amount; ~~or~~;

~~(6)~~--(f) ~~That it~~ A bank is conducting business in an unsafe and unauthorized manner, or is in an unsafe or unsound condition; ~~or~~;

~~(7)~~--(g) ~~It has~~ A bank refused to submit its papers, books and concerns to the inspection of the ~~superintendent or his authorized agent or representative~~ department; or,

~~(8)~~--(h) ~~That any~~ An officer of ~~such~~ a bank has refused to be examined ~~on~~ under oath ~~touching~~ regarding the affairs, business or concerns of any bank in so far as ~~such~~ they relate to ~~the~~ solvency ~~of the bank~~ or matters having to do with the supervision by the ~~superintendent~~ department; then the department may, in its discretion, close the bank and take possession of all the books, records, assets and business of every description of the bank, and hold them and retain possession of them until the bank is authorized by the department to resume business, or its affairs are liquidated as provided in this chapter, and it shall do so in cases where a bank comes into its possession voluntarily, or in the manner provided by law.

~~The superintendent, himself, or his duly authorized agent, upon express authority from the superintendent, may, in his discretion close said bank and take possession of all the books, records, assets and business of every description of such bank, and hold the same and retain possession thereof until such bank shall be authorized by him to resume business, or its affairs be liquidated as herein provided, and he shall do so in cases where a bank comes into his hands voluntarily, or in the manner provided by law.~~

(2) The powers and authority conferred on the ~~superintendent~~ department by this section, except in cases of voluntary surrender, ~~shall be considered as~~ are discretionary and not as mandatory. ~~and so~~ As long as ~~a superintendent~~ the department acts in good faith ~~in the matter, neither he nor his deputies shall~~ the department and its employees and agents may not be held liable civilly or criminally or upon their official bonds ~~in any~~ for action taken ~~thereunder~~ under this section or for any failure to act ~~thereunder~~ under it."

Section 44. Section 5-1102, R.C.M. 1947, is amended to read as follows:

"5-1102. Penalty for closing bank with criminal intent. If ~~any superintendent of banks or official in~~ an employee or agent of the department ~~of banking, shall~~, as a result of malice or for personal gain, ~~declare any~~ declares a bank insolvent, he ~~shall, upon conviction thereof, be~~ is subject to ~~punishment by~~ a fine not exceeding one thousand

dollars ~~($1,000.00)~~ ($1,000) or imprisonment in the county jail not exceeding one (1) year, or both, ~~within the discretion of the court~~ and shall forfeit his office."

Section 45. Section 5-1103, R.C.M. 1947, is amended to read as follows:

"5-1103. Bank may be placed in ~~superintendent's~~ department's possession. ~~Any~~ A bank may place its affairs and assets under the control and in the possession of the ~~superintendent~~ department by posting a notice on the front door of ~~such~~ the bank, indicating that ~~said bank~~ it is in ~~his hands, which~~ the possession of the department. The notice shall be signed~~, in their own handwriting,~~ by a majority of the directors in office of ~~such~~ the bank. Immediately upon the posting of ~~such~~ the notice by ~~any~~ a bank, it shall notify the ~~superintendent thereof~~ department of its action."

Section 46. Section 5-1104, R.C.M. 1947, is amended to read as follows:

"5-1104. Effect of posting notice. The posting of ~~such~~ the notice by the directors of ~~any~~ a bank, or of a like notice ~~signed~~ by the ~~superintendent, shall be~~ department is sufficient to place all assets and property of ~~such~~ the bank, of whatever nature and wherever ~~situate~~ located, in possession of the ~~superintendent~~ department, and ~~shall operate~~ operates as a bank to ~~any detachment~~ an attachment or

~~any~~ other legal proceedings against ~~such~~ the bank or its assets~~.~~ ~~and no~~ No valid lien or claim can be acquired or created, or transfer or assignment made in any manner, binding or affecting any of the assets of ~~such~~ the bank after the posting of ~~such~~ the notice or after taking possession of ~~any~~ a bank by the ~~superintendent~~ department without ~~his~~ its consent."

Section 47. Section 5-1105, R.C.M. 1947, is amended to read as follows:

"5-1105. Taking possession of bank -- notice. On taking possession of the assets and business of the bank, the ~~superintendent~~ department shall, in addition to posting notice ~~thereof~~ on the front door of ~~such~~ the bank ~~as aforesaid~~, also notify at once, personally or by wire, all corresponding banks, and ~~any and~~ all persons or corporations known to ~~him~~ it to be ~~holding or~~ in possession of~~,~~ any of the estate of ~~such~~ the bank."

Section 48. Section 5-1106, R.C.M. 1947, is amended to read as follows:

"5-1106. Resumption after closing. After the ~~superintendent~~ department has taken possession of ~~any~~ a bank, ~~he~~ it may permit ~~such~~ that bank to resume business upon ~~such~~ conditions ~~as~~ which may be approved by ~~him~~ it."

Section 49. Section 5-1107, R.C.M. 1947, is amended to read as follows:

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"5-1107. Powers of ~~superintendent~~ department on closing bank -- court proceedings. Upon taking the assets and business of ~~any~~ a bank into ~~his~~ its possession, the ~~superintendent~~ department is authorized to collect all moneys due to ~~such~~ that bank, and to do ~~such~~ those other acts ~~as are~~ necessary to conserve its assets and business, and ~~he~~ the department shall proceed to liquidate the affairs ~~thereof~~ of the bank. ~~He shall have general and inclusive power and authority,~~ The department may, in its discretion, and except as otherwise limited by the terms of this act, ~~to~~ do any ~~and all~~ acts~~, to take any and all steps~~ necessary~~, or, in his discretion,~~ desirable for the protection of the property and assets of ~~such~~ the bank and the speedy and economical liquidation of the assets and affairs of ~~such~~ the bank and the payment of its creditors, or for the reopening and resumption of business ~~by said bank,~~ where that is practicable or desirable. ~~He~~ It may institute, in ~~his~~ its own name ~~as superintendent,~~ or in the name of the bank, ~~such~~ those suits ~~and actions~~ and other legal proceedings as ~~he deems~~ it considers expedient for ~~such~~ those purposes~~,~~. ~~and by making application~~ By applying to the district court of the county in which ~~such~~ the bank is located, or to the judge ~~thereof,~~ of that court in chambers, the department may ~~procure~~ obtain an order to sell, compromise, or compound any bad or doubtful debt or claim, and to sell and dispose of

any ~~or all the~~ assets, which sale may be made to stockholders, officers, directors, or others interested in ~~such~~ the bank, on consent of the court. ~~On such~~ In the court proceedings the bank shall be made a party by notice issued on order of the court or judge, in ~~lieu~~ place of summons, and served upon some officer of the bank, if ~~any~~ there ~~be~~ is any in the county~~,~~. ~~but if~~ If no officer can be found in the county then the ~~same~~ notice shall be posted ~~in manner and form the same as probate notices, that is,~~ in three (3) public places in the county for at least ten (10) days before the day of hearing ~~thereon~~. The hearing of ~~any such~~ an application or petition by the ~~superintendent~~ department may be had at any time, either in term or vacation in court, or in chambers, as the court may order, after ~~said~~ the bank has had five (5) days' notice of ~~such~~ the application, or the notice has ~~remained~~ been posted for at least ten (10) days."

Section 50. Section 5-1108, R.C.M. 1947, is amended to read as follows:

"5-1108. Recourse of aggrieved bank -- application to court for injunction -- pleadings -- evidence -- appeals. ~~Any~~ A bank ~~deeming itself~~ aggrieved by the action of ~~superintendent~~ the department in taking possession of its assets or closing its doors may, within ten (10) days after ~~such~~ possession ~~shall have~~ has been taken, apply to the

district court of the county in which its principal place of business is located, or to the judge ~~thereof~~ of that court in chambers, to enjoin further proceedings by the ~~superintendent, and the~~ department. The court or the judge ~~thereof~~ in chambers, after notifying the ~~superintendent~~ department to appear at a specified time and place to show cause why further proceedings should not be enjoined, and after hearing the allegations and proofs of the parties, and determining facts, may, on the merits, dismiss ~~such~~ the application, or enjoin the ~~superintendent~~ department from further proceeding and direct ~~him~~ it to surrender the business and assets of ~~said~~ the bank. ~~Such~~ The application for injunction may be heard at any time after five (5) days' notice from the time of service on ~~said--superintendent~~ the department, in the discretion of the court, ~~or the judge thereof,~~ or at any time prior ~~thereto~~ to then by the consent of the ~~superintendent~~ department. Application ~~therefor~~ shall be made on the verified complaint of the bank, in the ~~ordinary~~ form used in civil actions ~~in district court~~, and a copy of ~~such~~ the complaint shall be served on the ~~superintendent~~ department with the order to show cause. The ~~superintendent~~ department shall, at least two (2) days before the time set for hearing, file ~~in the cause,~~ with the court and serve upon counsel for plaintiff an answer to the complaint, also in the ~~ordinary~~ form used in civil actions

~~in the district court. Demurrers and motions directed to pleadings are not permissible in proceedings had under this section, but any~~ Any questions raised by ~~demurrer or~~ motion in other actions may be raised in the answer. On the issues ~~thus made on~~ raised by the complaint and answer, the court, or the judge ~~thereof~~ at chambers, at the time fixed for showing cause, ~~or at such other time to which he, in his discretion, may continue the same,~~ shall try the matter on the merits by hearing the allegations and proofs of the parties and shall enter judgment, ~~in the same manner~~ as ~~on~~ in the trial of ~~ordinary~~ other civil actions. ~~In the district court, and the rules governing the trial of ordinary civil actions and for the production and taking of evidence and hearing the examinations of witnesses and the entry of findings and judgments therein, shall prevail. In event~~ If the ~~superintendent~~ department makes no appearance in the time ~~limited~~ allowed, the court shall enter ~~his~~ its default and proceed to hear the proofs of the plaintiff ~~in like manner~~ as in civil actions under similar circumstances, and enter judgment accordingly. The judgment entered either after hearing on the merits or by default, ~~shall be~~ is a final judgment. ~~from which either party shall have the right, by notice filed within twenty (20) days after entry, to appeal to the supreme court, in the same manner as from final judgment in a civil action. Provided, however, that~~

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~~during~~ During the pendency of ~~such~~ litigation the ~~superintendent--of--banks~~ department shall take ~~such~~ that action in relation to the assets of ~~said~~ the bank ~~as~~ which is necessary to conserve them."

Section 51. Section 5-1109, R.C.M. 1947, is amended to read as follows:

"5-1109. ~~Superintendent~~ Department may appoint agents --liquidating agents -- salaries and expenses. (1) ~~The superintendent--may,--under--his--hand--and--seal,-appoint-and authorize-an-agent-to-assist-him--or--act--for--him--in--the performance---of---any---powers--or--duties--hereunder,--the certificate-of-appointment-to-be-filed-in-the-office-of-said superintendent,-and-a-certified-copy--thereof--delivered--to such--agent.---Such--agent--and--other-employees-hereinafter mentioned,--shall--receive--a--salary,--to---be---fixed---as hereinafter-provided,-for-the-time-he-is-actually-engaged-in the-performance-of-such-duties.--The-superintendent-may-also employ--such--attorneys--and-procure-such-expert-accountants and-other--experts,--assistants--and--employees--as--may--be neeessary--in-the-liquidation-and-distribution-of-the-assets of--any--such--bank,--and--the--performance--of--his--duties hereunder,--and~~ The department may retain ~~such-of-the~~ those officers or employees of ~~such~~ the bank ~~as-he~~ which it ~~may deem~~ considers necessary. ~~He~~ It shall require from the agent appointed by ~~him~~ it and from ~~such--of--the~~ those

assistants ~~as--will~~ who have charge of any of the assets of the bank ~~such~~ that security for the faithful discharge of their duties as ~~he-may-deem~~ it considers proper.

(2) ~~Provided,--further,--that--the--superintendent-may also-designate-any-one-of-the-examiners-of-the-department-of banking-as-a-general-liquidating-agent,-with-his--office--in the--department--of--banking,-for-the-purpose-of-liquidating any-one-or-all-state-banks-in-the--process--of--liquidation, and-for-the-purpose-of-conducting-such-liquidation-under-the direction-of-said-superintendent,-and-may-authorize-the-said liquidating--agent--to--employ--such-clerical-help-as-may-be necessary.--Such-liquidating-agent-shall-receive-a-salary-to be-fixed-by-the-superintendent-of-banks,-not-to-exceed-three thousand-six--hundred--dollars--($3,600.00)--per--year,--and necessary--traveling--and--hotel--expenses--incurred--in-the performance-of-his-official-duties.~~ The salary of ~~the~~ a liquidating agent and necessary clerical assistance, and other expenses incurred by ~~the--said~~ a liquidating agent, shall be borne equally and ratably by the bank or banks in process of liquidation under ~~such~~ the agent's charge in proportion to the total amount of resources of each of ~~such~~ the banks. The funds for ~~such~~ those expenses shall be raised by assessing each bank in ratio herein set forth and paying ~~such~~ those expenses direct to the persons entitled ~~thereto~~ to them, without depositing any of ~~such~~ the funds in

the state treasury."

Section 52. Section 5-1110, R.C.M. 1947, is amended to read as follows:

"5-1110. Compensation of agents and attorneys. The compensation of the agents, ~~appointed by the superintendent, and of~~ attorneys, expert accountants and other assistants, appointed by the department, and all expenses of liquidation and distribution of a bank whose assets and business ~~shall be~~ have been taken possession of by the ~~superintendent~~ department, shall be fixed by the ~~superintendent~~ department, but subject to ~~be approved~~ approval by the judge of the district court of the county in which the bank is located, on notice of ~~such~~ the bank~~,~~. ~~and the superintendent of banks~~ The department shall, upon written request of ~~said~~ the district judge, supply semiannual statements showing the condition of ~~said~~ the bank in process of liquidation. Except in cases of emergency, the compensation ~~to be~~ paid to attorneys and expert ~~accounts~~ accountants shall be fixed and approved before services are rendered. When the compensation ~~shall have~~ has been ~~so~~ fixed and approved and the services rendered, the ~~same~~ compensation shall be paid out of the funds of ~~such~~ the bank in the hands of the ~~superintendent~~ department, and ~~shall be~~ are a proper charge and lien on the assets of ~~such~~ the bank ~~as herein provided.~~"

Section 53. Section 5-1111, R.C.M. 1947, is amended to

read as follows:

"5-1111. Notice to creditors of insolvent bank. The ~~superintendent~~ department shall ~~cause~~ give notice ~~to be given~~ by advertisement in a newspaper of general circulation in the town or city in which ~~said~~ the bank is situated, if there ~~be~~ is one, and if not, then in ~~such~~ some other newspaper published in ~~the~~ this state ~~of Montana, as~~ which the ~~superintendent~~ department shall designate, once a week for two (2) successive weeks~~,~~. ~~calling~~ The notice shall call on all persons who have claims against ~~said~~ the bank to present ~~the same~~ them to the ~~superintendent~~ department or ~~his duly~~ its authorized agent at a place to be specified in ~~said~~ the notice, and to make sworn proof ~~thereof~~, in form to be fixed by ~~him~~, the department, within the time specified in ~~said~~ the notice, not less than ninety (90) days from the date of the first publication ~~thereof~~. A copy of ~~such~~ the notice shall be mailed to all persons whose names appear as creditors upon the books of the bank."

Section 54. Section 5-1112, R.C.M. 1947, is amended to read as follows:

"5-1112. Claims -- allowance and rejection. The ~~superintendent~~ department shall reject or allow all claims in the whole or in part, and on each claim allowed shall designate the order of its priority. If a claim is rejected or an order of priority allowed lower than that claimed,

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notice shall be given the claimant personally or by registered mail, and an affidavit of the service of ~~such~~ the notice, which shall be prima facie evidence ~~thereof~~, of service, shall be filed in the office of the ~~superintendent~~ department. The action of the ~~superintendent--shall-be~~ department is final unless an action ~~be~~ is brought by the claimant against the bank in the ~~proper~~ district court of the county where the bank is located within ninety (90) days after ~~such~~ the service to fix the amount of the claim and its order of priority or either. An appeal from the ~~superintendent's~~ department's allowance, either as to priority or amount, may also be taken to the district court of ~~such~~ that county by any party in interest by serving notice on the ~~superintendent--notice--thereof~~ department, stating the grounds of objection and filing ~~the-same~~ it in ~~said~~ that court within thirty (30) days after allowance. Within five (5) days after ~~such~~ the notice, the ~~superintendent~~ department shall file in the court, and serve on the appellant, a copy of the claim and ~~his~~ its reasons for allowance. The court ~~or-judge~~ shall, after five (5) days' notice of time and place of hearing on the issues ~~thus made~~ raised, hear the proof of the parties and enter judgment reversing, affirming or modifying the ~~superintendent's~~ department's action."

Section 55. Section 5-1113, R.C.M. 1947, is amended to

read as follows:

"5-1113. Payment of claims. Claims presented to the ~~superintendent~~ department prior to the expiration of the time fixed in the notice to creditors ~~therefor~~, and allowed by ~~him~~ it, shall be paid in the order of priority ~~hereinafter~~ fixed in this chapter. Those filed after ~~such~~ that expiration and ~~prior--to~~ within one year ~~thereafter shall--be~~ of that expiration are entitled, after they have been allowed by the ~~superintendent~~ department, to share in the distribution of the assets of the bank only to the extent of the assets undistributed in the hands of the ~~superintendent~~ department and available for the payment of claims of their order of priority at the time ~~such~~ the claims are filed~~,~~. ~~but-as~~ As against other claims of ~~their~~ the same order of priority, on which dividends have been paid, they ~~shall---be~~ are entitled to payment in a proportionate amount before further payments are made on ~~such~~ those other claims. All claims filed after the expiration of one year following the date fixed in the notice to creditors as the time for presentation of claims are not entitled to be allowed or paid unless all other creditors' claims of any kind ~~or-character~~, except claims of shareholders, based on stock or assessments paid on stock ~~shall~~ have been fully paid ~~and--discharged~~, and a surplus remains in the hands of the ~~superintendent~~ department, and

then only from ~~such~~ that surplus."

Section 56. Section 5-1114, R.C.M. 1947, is amended to read as follows:

"5-1114. Claims -- order of payment -- priorities. (1) Except as otherwise provided by the Uniform Commercial Code, the order of payment of the debts of a bank liquidated by the ~~superintendent of banks~~ department shall be as follows:

~~(1)~~--(a) The expense of liquidation, including compensation of agents, employees, and attorneys~~;~~;

~~(2)~~--(b) All funds of any other bank in process of liquidation by the ~~superintendent of banks~~ department and placed on deposit by the ~~superintendent of banks~~ department~~;~~;

~~(3)~~--(c) All funds held by the bank in trust~~;~~;

~~(4)~~--(d) Debts due depositors, holders of cashier's checks, certified checks, drafts on correspondent banks, including protest fees, paid by them on valid checks or drafts presented after closing of the bank, pro rata. All deposit balances of other banks or trust companies, and all deposits of public funds of every kind ~~and character~~ (except those actually placed on special deposit under the statutes providing therefor), including those of the United States, the state of Montana, and every county, district, municipality, political subdivision, or public corporation of this state, whether secured or unsecured, or whether

deposited in violation of law or otherwise, are included within the terms of this ~~subdivision~~ subsection (1)(d) and take the same priority as debts due any other depositor. All contractual liabilities pro rata. Accrued interest on savings accounts, certificates of deposit, or other interest-bearing contracts, up to the time of the closing ~~of~~ of the bank, ~~to~~ shall be considered as part of the debt due.

~~(5)~~--(e) Interest on ~~all~~ the ~~foregoing~~ classes of claims contained in subsections (1)(a) through (1)(d) of this section without regard to the priority computed from the date of closing of the bank at the rate of seven ~~per centum~~ percent (7%) ~~per annum~~ a year~~;~~;

~~(6)~~--(f) Unliquidated claims for damages and ~~the like~~ similar claims, including claims of stockholders for amounts claimed to have been voluntarily advanced to the bank or paid in by way of special or voluntary or other assessments~~;~~. ~~provided, however, that the superintendent~~ The department may, in ~~his~~ its discretion, without regard to the priorities ~~herein~~ fixed in ~~subdivisions (3), (4), (5), and (6)~~ subsections (1)(c) through (1)(f) of this section, or in preference to the payment of any claims of creditors within these ~~subdivisions~~ subsections, pay off and discharge any lien, claim, or charge against the assets or property of the bank in ~~his~~ its hands and pay ~~out and expend such~~ those sums

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as he deems it considers necessary for the preservation, maintenance, conservation, and protection of ~~any such~~ those assets and property, and likewise property on which the bank has liens by mortgage or otherwise~~;~~. ~~and he~~ It may also~~;~~ in ~~his~~ its discretion create a fund or retain in ~~his~~ its hands, in preference to the claim of any creditors in ~~the subdivisions above mentioned~~ subsections (1)(c) through (1)(f), moneys for ~~the aforesaid~~ those purposes.

~~(7)~~--(2) Collateral which ~~shall have~~ has been put up or pledged as security for the payment of bills payable by ~~any~~ a bank, or ~~any~~ loans or discounts which ~~shall~~ have been outstanding as rediscounts of ~~any~~ a bank prior to the closing ~~thereof,--shall~~ of it, is not ~~be~~ available to the other creditors of ~~such~~ the bank in whole or in part until ~~such~~ the bills payable or rediscounts ~~shall~~ have been retired, after which offsets as provided in this section ~~provided~~ shall be allowed.

~~(8)~~--(3) Deposits of ~~any~~ a person, firm, or corporation in a bank which is in the possession of the ~~superintendent~~ department may be offset against any indebtedness, (subject to the conditions of ~~the preceding paragraph~~ subsection (2) of this section), except assessments on stock, due to ~~such~~ the bank from ~~such~~ that person, firm, or corporation. All dividends when declared in favor of ~~any~~ a creditor of the bank may be applied, in

the discretion of the ~~superintendent~~ department, in satisfaction of the indebtedness, if any, due the bank from ~~such~~ the creditor."

Section 57. Section 5-1115, R.C.M. 1947, is amended to read as follows:

"5-1115. Claims -- partial payments. The ~~superintendent~~ department need not await the expiration of the time allowed for filing claims, as fixed in the notice to the creditors, for the payment of dividends~~;~~. ~~but he~~ It may, in ~~his~~ its discretion, and if under the circumstances of the particular case ~~he deems~~ it considers it expedient and safe, at any time after taking possession of ~~said~~ the bank and prior to the expiration of ~~such~~ the period fixed for filing of claims, if ~~he have~~ it has on hand in cash sufficient funds over and above the expenses of liquidation, make ~~prorata~~ pro rata distribution to any class of creditors next entitled ~~thereto~~ to distribution, in the order of priority ~~heretofore~~ fixed in this chapter, making ~~such~~ that payment to ~~said~~ the creditors as they appear on the books and records of the bank and determining the priority and basing his apportionment on the amount shown to be due by ~~such~~ the books and records. At any time after the expiration of the date fixed for the presentation of claims against ~~said~~ the bank and from time to time thereafter, when, in ~~his~~ its discretion there are sufficient funds

available ~~therefor~~, the ~~superintendent~~ department shall, after making proper provisions for the payment of expenses of liquidation, declare and pay dividends to all creditors of ~~such~~ the bank pro rata in the order of their priority. If, after the time fixed for presentation of claims against the bank has expired, it appears that ~~any~~ a person, prior to the expiration of ~~said~~ the period, or at any other time, has been paid more than the pro rata amount due him as compared with the amounts then paid other creditors, nothing more ~~shall~~ may be paid ~~such creditors~~ that creditor until ~~such time as~~ the payment made other creditors ~~shall place~~ places them on equal footing. In calculating dividends, all disputed claims and deposits shall be taken into account and the amount of dividends upon ~~such~~ the disputed claims or deposits shall be held by the ~~superintendent~~ department until the ~~justice and~~ validity of ~~such~~ those claims or deposits ~~shall have~~ has been finally determined. Claims against ~~any~~ a bank in process of liquidation may be assigned in whole or in part subject to the approval of the ~~state superintendent of banks~~ department. Assignments of claims ~~shall be~~ are binding upon the ~~superintendent~~ department only after ~~the same~~ they have been filed and allowed by the ~~superintendent~~ department, ~~but not before~~, and only then subject to the payment of the assignor's liabilities to the bank. ~~Such~~ An assignment shall be made by filing written

notice, signed by the original claimant, with the ~~superintendent~~ department or person in charge of ~~said~~ the bank. No assigned claims may be offset against obligations due the bank. A check or draft drawn against ~~any~~ a bank closed or taken possession of by the ~~superintendent~~ department, whether issued before or after closing ~~thereof~~, shall not be recognized as a claim against ~~said~~ the bank, or as an assignment of any amount, whether protested or not protested."

Section 58. Section 5-1116, R.C.M. 1947, is amended to read as follows:

"5-1116. Deposit of funds in ~~superintendent's~~ department's hands. All funds in the hands of the ~~superintendent~~ department belonging to ~~any~~ a bank in process of liquidation shall be deposited in ~~his~~ the department's name ~~as superintendent~~ in ~~such~~ those banks within the state ~~as~~ which may be selected and designated by ~~him~~ it and subject to ~~his~~ its checks ~~as superintendent of banks~~. ~~Said~~ Those funds are to be preferred and protected as provided in this act ~~provided~~."

Section 59. Section 5-1117, R.C.M. 1947, is amended to read as follows:

"5-1117. Disposition of unclaimed funds. (1) The ~~superintendent~~ department shall certify to the state treasurer ~~of the state~~ a complete list of funds remaining ~~in~~

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~~his hands~~ with it uncalled for, which have been left ~~in--his hands~~ with it in ~~his~~ its official capacity, in trust for depositors in and creditors of ~~any~~ a liquidated bank after they have been held by ~~him~~ it for six (6) months from the date of the final liquidation of the institution. Along with this certificate, ~~he~~ it shall transmit to the state treasurer ~~of the state~~ the funds with accumulated interest ~~thereon~~ on them, which ~~he~~ it has so held in trust for six (6) months. A copy of ~~such~~ the certificate shall also be filed with the state auditor, who shall make a record ~~thereof~~ of it.

(2) The state treasurer shall deposit ~~such~~ the funds and interest in the general fund of ~~the~~ this state ~~of Montana~~.

(3) ~~Any~~ A depositor or creditor of a liquidated bank who has not been paid the amount standing to his credit as thus certified to the state treasurer, may apply to the state board of examiners for the amount due him. The depositor or creditor shall make an affidavit and offer proof of his identity and of the amount due him by the liquidated bank. When satisfied as to the correctness of the claim and of the identity of the person, the state board of examiners shall forward it to the auditor, who shall audit the ~~same~~ claim and if found correct so certify to the state board of examiners, ~~who~~ which, if ~~they approve it~~ it

approves the claim, shall transmit ~~it~~ the claim to the ~~legislative--assembly~~ legislature with a statement of ~~their~~ its approval."

Section 60. Section 5-1118, R.C.M. 1947, is amended to read as follows:

"5-1118. Disposition of assets remaining after payment of claims. ~~(a)~~-(1) ~~Whenever~~ When the ~~superintendent of banks~~ department has paid to each ~~and every~~ depositor and creditor of ~~such~~ the bank whose claims ~~shall~~ have been ~~duly~~ approved and allowed as ~~herein~~ provided in this chapter, the amount due ~~thereon~~ on them, or made satisfactory adjustment ~~thereof~~ of them, and ~~shall have~~ has made provisions for unclaimed and unpaid deposits and disputed claims and deposits, and ~~shall have~~ has paid all the expenses of liquidation, ~~he~~ it shall file with the clerk of the district court of the county in which the bank is located, a report of ~~his~~ its administration of ~~said~~ the trust. If there ~~be~~ are remaining assets on hand the ~~superintendent of banks~~ department may apply to the judge of ~~said~~ that court in open court or in chambers, for an order authorizing ~~him~~ it to surrender the remaining assets together with all the stationery, correspondence, books and records, ~~had and~~ kept by the bank while it was a going concern to the directors of ~~said~~ the bank in office at the time of closing ~~the same~~ it, as trustees for stockholders, or to ~~such~~ that other person, if

any, ~~as--may-have-been-or-may-be~~ designated as trustee by a majority of the stockholders. The report and petition shall be set for hearing upon ~~such~~ notice ~~as~~ which the court may direct. ~~and--upon~~ Upon hearing ~~had~~ and approval of ~~said~~ the report and account ~~being-given~~ and the surrender of ~~said~~ the assets ~~being--made~~ as ~~in---the---order~~ directed, the ~~superintendent--of--banks--shall-be~~ department is discharged from all further liability or responsibility in connection with the assets and affairs of ~~said~~ the bank. The court may, if requested, require ~~such~~ the trustees to give bond in ~~such~~ an amount ~~as~~ the court may fix, conditioned for the faithful performance of their duties. ~~It-shall-be-the-duty of-the-said~~ The trustee or trustees ~~to~~ shall complete the liquidation of any remaining assets ~~with-power-to~~ and may sell and dispose of real and personal property as rapidly as ~~may-be~~ possible and ~~to~~ shall distribute the proceeds ~~of-same~~ among the stockholders as their ~~equities--or~~ rights may appear, or ~~to~~ dispose of the ~~same~~ proceeds in ~~such~~ some other manner as the stockholders shall~~,~~ by majority action, direct~~.~~ ~~provided,-however,-the~~ The court may upon request of a majority of the stockholders order the ~~superintendent of--banks~~ department to close up the trust as provided in ~~clause-(b)~~ subsection (2) of this section.

~~(b)~~--(2) If the assets of ~~said~~ the bank ~~be~~ are insufficient for making payments in full to the depositors

and creditors of ~~said~~ the bank, then, ~~whenever~~ when the ~~superintendent~~ department has liquidated all available assets and disbursed ~~the-same~~ them as provided by law, the ~~superintendent-of-banks~~ department shall file with the clerk of court of the county in which the bank is located, a final report of ~~his~~ its liquidation of ~~such~~ the bank. Upon ~~such~~ notice ~~as~~ which the court may order, the report shall be set for hearing before the court and if found correct and all funds accounted for, the court shall approve ~~the-same~~ it. The ~~superintendent-of-banks~~ department may at the same time and in the report make application to the district court of the county in which ~~such~~ the bank is located, for an order directing the closing of the trust and upon entry of the order closing the trust the ~~superintendent-of-banks-shall-be~~ department is discharged from all further liability or responsibility in connection with the assets and affairs of ~~said~~ the bank~~,~~ ~~and-the~~ The charter of ~~said~~ the bank shall be forfeited and all the stationery, correspondence, books, and records ~~had-and~~ kept by the bank while it was a going concern, and ~~deemed~~ considered by the ~~superintendent-of banks~~ department to be of no value, may be destroyed~~,~~ ~~provided,---however,--that~~ However, no correspondence or records ~~shall~~ may be destroyed ~~for-a--period--of~~ until ten (10) years ~~from~~ after the date the bank ceased to be a going concern.

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~~(c)~~--(3) On application for orders, as ~~in this section~~ provided in this section, the bank shall be made a party by notice issued on order of the court or judge and served in ~~such~~ a manner ~~as~~ the court ~~shall direct~~ directs and ~~the hearing of~~ applications authorized by this section may be ~~had~~ heard at any time in court or in chambers, as the court may order, ~~provided there be~~ upon not less than five (5) days' posted ~~and/or~~ or served notice of the hearing."

Section 61. Section 5-1123, R.C.M. 1947, is amended to read as follows:

"5-1123. Punishment. When no other punishment is provided ~~herein~~, ~~any~~ a person willfully or knowingly violating ~~any of the provisions of~~ this act, ~~shall be deemed~~ is guilty of a misdemeanor~~, and shall be punished by a fine of not more than five hundred dollars ($500.00) or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment~~. The attorney general upon information furnished by the ~~superintendent of banks~~ department, shall ~~bring any actions necessary~~ sue to enforce ~~the provisions of~~ this act."

Section 62. Section 5-1126, R.C.M. 1947, is amended to read as follows:

"5-1126. Power of closed banks to borrow money from governmental agencies. Notwithstanding any other ~~provisions of~~ law, the liquidating agents of closed banks ~~shall have the power to~~ may borrow money from ~~the Reconstruction Finance Corporation or other governmental~~ an agency of the federal government on behalf of commercial banks, savings banks, trust companies and investment companies ~~now closed or which may hereafter be~~ closed and in liquidation and, as security ~~therefor, to~~ for the loan may pledge or mortgage the assets and properties thereof, for the purpose of paying depositors or creditors ~~thereof~~ in part or in full, after ~~making application~~ applying to and obtaining the approval of the ~~superintendent of banks~~ department and the district court of the county in which ~~said~~ the bank, or trust or investment company is located, upon ~~such~~ the court proceedings ~~had and obtained as are~~ prescribed in section 5-1107."

Section 63. Section 5-1129, R.C.M. 1947, is amended to read as follows:

"5-1129. Manner of issuing preferred stock. ~~Such~~ The preferred stock may be issued and sold upon ~~such~~ terms and conditions ~~as may be~~ approved by the ~~superintendent of banks~~ department, or ~~as may be~~ required for the purchase of ~~such~~ the stock by ~~the Reconstruction Finance Corporation or other~~ an agency or quasi-agency of the federal government."

Section 64. Section 5-1202, R.C.M. 1947, is amended to read as follows:

"5-1202. Banking institutions may take advantage of

federal deposit insurance corporation aid. ~~Any~~ A banking institution ~~now--or--hereafter--organized-under-the-laws-of this-state-is-hereby-empowered~~ may, on the authority of its board of directors, or a majority thereof, ~~to~~ enter into ~~such~~ those contracts, incur ~~such~~ those obligations and generally ~~to-do-and~~ perform any ~~and-all-such~~ acts ~~and-things whatsoever--as--may--be~~ necessary or appropriate in order to take advantage of any ~~and---all~~ memberships, loans, subscriptions, contracts, grants, ~~right~~ rights, or privileges, ~~which-may-at-any-time-be~~ available ~~or--inure~~ to banking institutions or to their depositors, creditors, stockholders, conservators, or liquidators, by virtue of those provisions ~~of--section--12B~~ of the Federal ~~Reserve~~ Deposit Insurance Act, ~~as--amended,~~ which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits, ~~or-of-any-other-provisions-of-that~~ or of any other act or resolution of Congress to aid, regulate, or safeguard banking institutions and their depositors~~,~~ ~~including--any--amendments--of-the-same-or-any-substitutions therefor,-also,-to~~ A banking institution may also subscribe for and acquire ~~any~~ stock, debentures, bonds, or other types of securities of the Federal Deposit Insurance Corporation, and ~~to~~ may comply with the lawful ~~regulations~~ rules and requirements from time to time ~~issued-or-made~~ adopted by ~~such~~ that corporation."

Section 65. Section 5-1203, R.C.M. 1947, is amended to read as follows:

"5-1203. Appointment of the corporation as agent. ~~In the--event--any~~ If a banking institution, the deposits in which are in any extent insured by the Federal Deposit Insurance Corporation created by ~~section-12B-of~~ the Federal ~~Reserve~~ Deposit Insurance Act, ~~as--amended,~~ 12 U.S.C. sections 1811-1831, is closed on account of inability to meet the demands of its creditors, the ~~superintendent--of banks~~ department of business regulation may appoint ~~said~~ the corporation agent, without bond, to assist ~~him~~ it or act for ~~him~~ it in the liquidation of ~~such~~ that banking institution."

Section 66. Section 5-1205, R.C.M. 1947, is amended to read as follows:

"5-1205. Examinations by the corporation may be accepted -- effect of act. (1) The ~~superintendent--of--banks is---authorized---to~~ department may accept, in ~~his~~ its discretion, in ~~lieu~~ place of any examination authorized by the laws of this state to be conducted by ~~his~~ the department of a banking institution, the examination ~~that-may-have-been~~ made of ~~same~~ it within a reasonable period by the Federal Deposit Insurance Corporation~~,~~ ~~provided,~~ if a signed copy of ~~said~~ the examination is furnished to ~~said-superintendent of-banks~~ the department. ~~Said-superintendent-of--banks~~ The department may, also in ~~his~~ its discretion, accept ~~any~~ a

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report relative to the condition of a banking institution ~~which--may-have-been~~ obtained by ~~said~~ the corporation within a reasonable period, in ~~lieu~~ place of a report authorized by the laws of this state to be required of ~~such~~ the institution by ~~his~~ the department~~,~~ ~~provided~~ if a copy of ~~such~~ the report is furnished to ~~said--superintendent--of banks,--and~~ the department. The department may in ~~his~~ its discretion disclose to ~~said~~ the corporation, or ~~any~~ an official or examiner thereof, any information possessed by the ~~office-of-said-superintendent-of-banks~~ department with reference to the conditions or affairs of ~~any-such~~ an insured institution.

(2) ~~Said-superintendent-of--banks~~ The department may furnish to ~~said~~ the corporation, or to ~~any~~ an official or examiner thereof, a copy or copies of any ~~or---all~~ examinations made of ~~any-such~~ those banking institutions and of any ~~or-all~~ reports made by ~~same~~ them.

(3) Nothing in this section ~~shall--be-construed-to limit~~ limits the duty of any banking institution in this state, deposits in which are to any extent insured under ~~the provisions--of--section--12B--of~~ the Federal Reserve Deposit Insurance Act, ~~as--amended,~~ or ~~of~~ any ~~amendment--of--or~~ substitution for ~~the-same~~ it, to comply with the provisions of ~~said~~ that act, its ~~amendments-or~~ substitutions, or the requirements of ~~said~~ that corporation relative to

examinations and reports, nor ~~to-limit~~ limits the powers of the ~~superintendent--of--banks~~ department with reference to examinations and reports under existing law."

Section 67. Section 5-1206, R.C.M. 1947, is amended to read as follows:

"5-1206. Closed banking institutions may borrow from the corporation. ~~Any~~ If a banking institution~~,--which~~ is ~~now or-may-hereafter-be~~ closed on account of inability to meet the demands of its depositors or by action of the ~~superintendent-of-banks~~ department or by action of its directors or in the event of its insolvency or suspension, the ~~superintendent-of-banks~~ department or ~~his~~ its agent, with the permission of the court having jurisdiction ~~thereof~~, may borrow from ~~said~~ the corporation and furnish any ~~part--or--all~~ of the assets of ~~said~~ the institution to ~~said~~ the corporation as security for a loan from ~~same~~ it. ~~Said--superintendent--of-banks~~ The department upon the order of a district court ~~of-record~~ of competent jurisdiction may sell to ~~said~~ the corporation any part or all of the assets of ~~such~~ the institution. The provisions of this section ~~shall~~ do not ~~be--construed--to~~ limit the power of ~~any~~ a banking institution, or the ~~superintendent---of---banks~~ department to pledge or sell assets in accordance with any existing law."

Section 68. Section 5-1401, R.C.M. 1947, is amended to

read as follows:

"5-1401. Common trust fund authorized. ~~Any~~ A bank or trust company qualified to act as fiduciary in this state may establish common trust funds for the purpose of furnishing investments to itself as fiduciary, or itself and others, as co-fiduciaries~~;~~. ~~and~~ It may, as ~~such~~ that fiduciary or co-fiduciary, invest funds which it lawfully holds for investment in interests in ~~such~~ the common trust fund, if ~~such~~ the investment is not prohibited by the instrument, judgment, decree, or order creating ~~such~~ the fiduciary relationship, and if in the case of co-fiduciaries, the bank or trust company procures the consent of its co-fiduciary or co-fiduciaries to ~~such~~ the investment~~;~~. ~~Provided,--that--any~~ A bank or trust company qualified to act as fiduciary in this state, which is not a member of the federal reserve system, shall, in operation of ~~such~~ the common trust fund, comply with the rules ~~and regulations as made from time to time~~ adopted by the ~~state examiner--and--ex-officio-superintendent-of-banks~~ department of business regulation, and ~~he--is--hereby--authorized--and empowered--to~~ the department may ~~make~~ adopt ~~such~~ rules ~~and regulations as he may deem~~ it considers necessary and proper in the premises."

Section 69. Section 7-101, R.C.M. 1947, is amended to read as follows:

"7-101. Purpose -- definition. A corporation mutually operated for the purpose of encouraging home ownership and thrift among its members and making substantially all of its loans to them on real estate mortgage security, shall be known in this act as a building and loan association or a savings and loan association, and ~~shall be~~ is under the supervision of the ~~state examiner and ex officio superintendent of banks, whose duty it~~ department of business regulation, which shall ~~be to~~ enforce all laws with respect ~~thereto~~ to it. The members of a building and loan association ~~shall be~~ are its shareholders, stockholders, borrowers or purchasers of real estate under contract. ~~Such~~ The associations ~~shall~~ have continual succession and shall be organized under the provisions of this ~~act~~ chapter. ~~Wherever~~ When used in this ~~act the name~~ chapter, "building and loan association" ~~is used the same shall apply to and comprehend~~ includes savings and loan associations organized under this act. "Department" means the department of business regulation provided for in Title 82A, chapter 4."

Section 70. Section 7-106, R.C.M. 1947, is amended to read as follows:

"7-106. Capital stock requirements -- investigation -- certificate of incorporation, how issued. The capital stock named in the articles of incorporation ~~shall be deemed to refer~~ refers to the authorized capital stock. ~~and the~~ The

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organization may be completed and business commenced when five per cent (5%) of the capital stock ~~thereof~~ is subscribed and not less than twenty-five hundred dollars ~~($2500.00)~~ ($2,500), paid in, in cash. ~~and such~~ That amount must thereafter be maintained~~,~~. ~~and provided further that whenever such~~ When the articles of incorporation are in ~~due~~ proper form and regularly executed and the bylaws have been duly approved as ~~above~~ required in section 7-105 and it ~~shall be made to appear~~ appears to the satisfaction of the ~~superintendent of banks~~ department that five per cent (5%) of the authorized capital has actually been paid in cash upon the subscription of shares, the ~~superintendent of banks~~ department shall ~~thereupon~~ then ascertain from the best sources of information at ~~his~~ its command the responsibility, character and general fitness of the incorporators~~,~~. ~~and that~~ The department shall also determine whether there is a reasonable need for the existence of ~~such an~~ the association, and ~~that~~ whether the public convenience and advantage will be promoted ~~thereby~~ by its existence. If the ~~superintendent of banks shall~~ department is not be satisfied with the result of ~~his~~ its investigations of the matters ~~above~~ specified~~,~~ ~~he~~ in this section, it shall, within sixty days (60) after ~~said~~ the articles of incorporation and bylaws have been presented to ~~him~~ it, refuse to issue the certificate ~~hereinafter~~

described in this section. If ~~he shall be~~ it is satisfied with the result of ~~his said~~ its investigations, ~~he~~ it shall within sixty days (60) after ~~said~~ the articles of incorporation and bylaws have been presented to ~~him~~ it, issue under ~~his hand, and~~ its official seal, a certificate reciting in substance the filing in ~~his~~ its office of the articles of incorporation and bylaws~~,~~. The certificate shall also state that ~~said~~ the articles and bylaws conform to all the requirements of this act; that ~~he~~ the department has approved ~~the same~~ them and that ~~he verily~~ it believes that the incorporators are fit and proper persons to conduct the business of a building and loan association as defined in this act and ~~said~~ the bylaws and that there is a reasonable need for the existence of ~~said~~ the building and loan association, and that the public convenience and advantage will be promoted thereby. ~~Said~~ The certificate shall be made in quadruplicate and attached to each copy of the articles of incorporation, one (1) of which shall be retained by the ~~superintendent of banks~~ department, the other three (3) shall be returned to the incorporators who shall ~~forthwith~~ immediately file one (1) copy ~~thereof in the office of~~ with the secretary of state~~,~~ and one (1) ~~in the office of~~ with the clerk and recorder of the county in which the principal place of business of ~~said~~ the association is located. ~~and the~~ The other copy shall be retained by the

association. Immediately upon the receipt of ~~said~~ the certified copy, the secretary of state shall issue a certificate of incorporation, ~~whereupon~~ at which time the incorporation of ~~said~~ the association ~~shall--be--deemed~~ is complete."

Section 71. Section 7-108, R.C.M. 1947, is amended to read as follows:

"7-108. ~~Superintendent-of-banks~~ Department to approve contracts paying income to person other than association -- penalty for not securing. No fiscal agency or promotion contract or any other contract or arrangement whereby the membership fee, or any other income properly payable to the association, or any part thereof, ~~shall be~~ is payable to an agent or other contracting party or otherwise than to the association, or whereby any part of the business of ~~such~~ the association or the management or conduct of its affairs or the expense ~~thereof~~ of them is contracted to another, ~~shall~~ may be entered into or allowed until ~~the same~~ it has been submitted to the ~~superintendent of banks~~ department and by ~~him~~ it approved in writing~~;~~. ~~nor--shall--any--such~~ That contract may not be extended without ~~such~~ the department's approval. ~~Any--such~~ The contract, or the extension of ~~any such~~ the contract, not ~~so~~ first approved ~~shall be--null--and~~ is void. ~~Any~~ A person operating under ~~such a~~ the contract or extension, not ~~so~~ first approved, or taking or receiving

~~any--such~~ income properly payable to the association without ~~such~~ approval, ~~shall be~~ is guilty of a misdemeanor."

Section 72. Section 7-113, R.C.M. 1947, is amended to read as follows:

"7-113. Powers and duties of building and loan associations. ~~Every~~ A building and loan association ~~is--a creature--of--the--law having certain powers and duties of a natural person and as such has power~~ may:

(1) ~~of~~ Have continual succession, by its corporate name;

(2) ~~To sue~~ Sue and be sued, in any court;

(3) ~~To--make~~ Make and use a common seal and alter ~~same~~ it at pleasure;

(4) ~~To appoint such~~ Appoint those officers or agents ~~as~~ the business of the corporation ~~may require~~ requires, and ~~to allow~~ pay them suitable compensation;

(5) ~~To--enter~~ Enter into ~~any~~ obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.

(6) ~~Such associations shall have power to issue~~ Issue stock to members on ~~such~~ the terms and conditions ~~as~~ the constitution and bylaws ~~may~~ provide, but ~~no~~ an association ~~shall~~ may not issue preferred stock.

(7) ~~To--assess~~ Assess and collect from members dues on stock and interest on loans at the times and in the amount

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as provided for in the constitution and bylaws. The combined total of the amounts paid to an association for interest, commission, bonus, discount and other similar charges, less a proper deduction for all dividends, refunds, and cash credits of all kinds, shall not create an actual net cost to the borrower in excess of the maximum lawful contract rate of interest in this state. Interest not exceeding the maximum lawful contract rate may also be charged on unpaid interest payments from the time ~~such~~ those interest payments are due. Interest, not exceeding the lawful contract rate, may also be charged and collected on delinquent stock payments when ~~such~~ those unpaid payments are credited with dividends. ~~Said~~ The interest shall in no event be at a rate exceeding the rate ~~per centum~~ percent of the dividend declared on the same unpaid stock payments. ~~No~~ An association ~~shall~~ may not charge or collect from ~~any~~ a stockholder, member or borrower, any fines, premiums, or penalties of any kind ~~whatsoever~~. ~~Any~~ An officer, agent or employee of ~~any~~ an association collecting or attempting to collect ~~any~~ a penalty, fine or premium of any kind ~~whatsoever~~ or ~~any~~ interest at a rate higher than provided in the note or other evidence of debt and in this act, ~~shall be~~ is guilty of a misdemeanor.

(8) ~~To--permit~~ Permit members to withdraw all or part of their stock credits at ~~such~~ the times and upon ~~such~~ the

terms, as the constitution and bylaws may provide~~;~~. ~~provided that--no~~ No charge or fee, ~~except as herein provided~~ in this section, ~~shall~~ may be made against ~~any~~ a member who withdraws his stock, after having given thirty (30) days' notice of ~~such~~ the withdrawal~~;~~. ~~provided, also, that no~~ No fine of any description ~~shall~~ may be made upon the par value of ~~such~~ that stock or upon the declared dividends because of ~~such~~ the withdrawal. ~~Any~~ A member who withdraws his stock or whose stock is matured, ~~shall be~~ is entitled to receive all dues paid in and all dividends declared less interest, if any, as provided in subsection (7), less a reasonable membership fee not exceeding two (2) ~~per centum~~ percent of the par value of each share of stock and less a prorata pro rata share of all losses, if any, which have occurred~~;~~. ~~and no~~ No other fine or assessments ~~shall~~ may be made against ~~such~~ the stock. Applications for withdrawal ~~are to~~ shall be registered on the books of the association in the order received and one-half of all cash collections, not required to meet outstanding contracts, must be used for the payment of the matured stock and of the withdrawals in the order registered~~;~~. ~~provided, however, that the~~ The other half of ~~such~~ those collections each month may be used for the payment of withdrawals other than in the order registered, but no member ~~shall~~ may receive more than one hundred dollars ~~($100.00)~~ ($100) in any one month other than by

payment of an application for withdrawal in the order registered. The term "outstanding contracts" includes the costs and expenses of operation, completion of loans, payment of taxes and assessments and necessary remodeling and repairs on properties owned by or mortgaged to the association, repayment of all borrowed money and all fixed charges.

(9) ~~To--cancel~~ Cancel shares of stock upon which all credits have been withdrawn, or upon which loans have been canceled or stock upon which no payments have been made for a period of six (6) months, by returning to the stockholders all credits, if any, and reissue ~~such~~ the shares as new stock.

(10) ~~To-issue~~ Issue stock to minors and permit ~~the-same~~ it to be withdrawn as other stock, and the receipt ~~of-such~~ by the minor ~~shall-be~~ is a valid acquittance if his rights have been fully secured to him.

(11) ~~To-acquire~~ Acquire, hold, encumber and convey ~~such~~ that real estate and personal property ~~as-may-be~~ necessary for the transaction of its business, or necessary to enforce or protect its securities. ~~Provided,-not~~ Not over ten (10) per cent of the assets of ~~any~~ an association ~~shall~~ may be invested in home office buildings, furniture, and fixtures. ~~Also--ownership-of-other~~ Other real property acquired in any manner or for any purpose ~~shall~~ may not be held for more

than five (5) years, except by permission of the ~~superintendent-of-banks~~ department.

(12) ~~To--borrow~~ Borrow money, only when necessary not exceeding twenty (20) ~~per--centum~~ percent of its assets except when borrowing from the federal home loan bank as ~~hereinafter~~ provided in this section, and issue its promissory note ~~therefor,-provided-that-the~~ for the loan. The assets and securities of an association ~~shall~~ may not be pledged ~~or-hypothecated~~ to secure its borrowed money or for any other purpose, without the consent of the ~~superintendent of--banks~~ department. However, if the ~~superintendent-of-banks~~ department determines that it is advisable to pledge assets in order that funds may be secured ~~he~~ it may authorize ~~such~~ the pledging ~~or--hypothecation,--but--in--no event--shall--the.~~ The margin of security pledged may not exceed twenty-five (25) ~~per-centum~~ percent of the funds so borrowed except when funds are borrowed from the federal home loan bank~~,~~. ~~an~~ An association may borrow money from the federal home loan bank upon ~~such~~ the terms ~~as-may-now-or-hereafter--be~~ required by the federal home loan bank, and ~~to~~ may execute the promissory note of the corporation ~~therefor~~ for the loan, and ~~to~~ may pledge ~~or-hypothecate~~ any of the assets of the corporation to secure the repayment of ~~said~~ the loan, with interest, in accordance with the Federal Home Loan Bank Act, and the rules ~~and-regulations~~ adopted ~~or-to~~

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~~be adopted thereunder~~ under it.

(13) ~~To make~~ Make loans to members on the security of the shares of the association, and also on their notes secured by first mortgages on improved real estate, including suburban homes, but not on farm lands or mining property, for not to exceed seventy-five (75) ~~per centum~~ percent of the actual value of ~~such~~ the real estate, and upon ~~such~~ the terms and conditions ~~as~~ which may be provided in the constitution and bylaws~~;~~. ~~provided, however, that in all cases~~ However, where the promissory note, or other written evidence of the loan made by ~~any~~ a building and loan association ~~required~~ requires the payment of ~~said~~ the loan, or total aggregate sum of principal and interest in periodic installments, ~~said~~ the promissory note, or other written evidence of debt shall specifically state the actual interest rate charged the borrower upon the unpaid balance of the principal amount at each periodic payment~~;~~. ~~provided further, that when~~ When the note or other evidence of debt does not require the payment of ~~said~~ the loan in periodic installments, the note or other evidence of debt shall specifically state the actual rate of interest ~~to be~~ charged the borrower.

~~Provided, however, that in all notes and mortgages now in force which do not specify the actual rate of interest charged the borrower upon the unpaid balance of the~~

~~principal at each periodic payment, all payments made on the said notes must be distributed by crediting the same, first, upon the interest on the unpaid balance of the loan at the rate actually earned under the terms of the notes and mortgages, and the remainder upon the principal of the loan, and no charges or deductions from any of said periodic payments shall be permitted by any such association not specifically provided for in said promissory note or other evidence of such loan;~~

~~(14) To cancel such loans and release the securities on such terms as the board of directors may provide. But any borrower may have his loan canceled upon the following terms, to wit:~~

(14) Cancel those loans and release the securities on those terms the board of directors may provide. A borrower may have his loan canceled ~~By~~ by paying all the interest up to date of cancellation and the sum actually borrowed, less payments on principal, dues paid in, and the dividends credited.

(15) ~~To invest~~ Invest the money of the association in:

(a) The bonds and securities of the United States, bonds and other obligations guaranteed as to interest and principal by the United States, and the stocks, bonds, debentures, and other securities and obligations of any federal home loan bank created under the laws of the United

States;

(b) The bonds and warrants of any state and of any county, city, or school district of the state of Montana;

(c) The obligations of the federal savings and loan insurance corporation lawfully issued pursuant to Title IV of the National Housing Act;

(d) Improved real estate which has been sold under contract, including suburban homes, but not including farm lands or mining property. ~~provided, however, that~~ However, the total amount remaining so invested, excluding real estate otherwise acquired, shall at no time exceed fifteen ~~(15)~~ per cent (15%) of its assets. ~~and provided further, that in no specific case shall the~~ The amount so invested may not exceed eighty-five ~~(85)~~ per cent (85%) of the price stipulated in the contract of sale or eighty-five ~~(85)~~ per cent (85%) of the value of the property so purchased, whichever is the lesser;

(e) Not to exceed ten ~~(10)~~ per cent (10%) of the association assets in other bonds and securities.

(16) ~~To loan~~ Loan money to other building and loan associations;

(17) ~~To make such~~ Make a semiannual distribution of all the earnings after payment of expenses and setting aside a sum for the contingent funds as ~~herein~~ provided in this act;

(18) ~~To amend~~ Amend its articles of incorporation by

changing the name, place of business, the number of directors, ~~to~~ and increase or decrease the capital stock and provide for its own continual succession by a majority vote of its directors. ~~provided that no such~~ However, those amendments ~~shall be effected~~ are of no effect until ~~first~~ approved by the ~~superintendent of banks~~ department;

(19) ~~To dissolve~~ Dissolve the corporation in accordance with the provisions of this chapter;

(20) ~~To provide~~ Provide by constitution and bylaws, adopted or amended, by its board of directors for the proper exercise of the powers ~~herein~~ granted in this section and the conduct and management of its affairs;

(21) ~~All such~~ Exercise those other powers ~~as~~ which are necessary and proper to enable ~~such~~ the corporation to carry out the purpose of its organization.

~~(22) Any two (2) or more building and loan associations, by and with the consent and approval of the superintendent of banks, may consolidate and unite and become incorporated in one (1) body, with or without any dissolution or division of the funds or property of any such association, or any such association may transfer its engagements, funds and property to any like association upon such terms as may be agreed upon by a majority vote of the respective board of directors, and ratified by a two thirds (2/3) vote of the shares present and voting in person or by~~

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~~proxy at a special meeting or meetings of the stockholders of the respective associations convened for that purpose, upon notice given as provided by law, said notice to state the object of the meeting. No such transfer shall prejudice any right of any creditor of such association."~~

Section 73. There is a new section to be numbered 7-113.2, R.C.M. 1947, which reads as follows:

7-113.2. Consolidation and transfer. Two (2) or more building and loan associations, with the approval of the department, may consolidate and become incorporated in one (1) body, with or without any dissolution or division of the funds or property of any of them, or any association may transfer its engagements, funds, and property to any other association upon terms agreed upon by a majority vote of the respective board of directors, and ratified by a two-thirds (2/3) vote of the shares present and voting in person or by proxy at a special meeting or meetings of the stockholders of the respective associations convened for that purpose, upon notice given as provided by law, the notice to state the object of the meeting. A transfer may not prejudice any right of any creditor of the association.

Section 74. Section 7-118, R.C.M. 1947, is amended to read as follows:

"7-118. Bonds of officers, agents and employees. ~~It shall be the duty of the~~ The board of directors of every

building and loan association ~~to~~ shall require that all officers, agents, and employees of building and loan associations whose duty includes the handling of moneys, notes, bonds, credits, and cash items, and whose duties include bookkeeping or the making of entries in relation to the business of the building and loan association and its customers, be bonded. The board of directors shall by an order ~~duly~~ entered upon the minute books of the board designate all the officers, agents, and employees to be so bonded and the amount of bonds to be given by each. ~~Such~~ The action as to the personnel and amount and the surety company or sureties ~~to~~ shall be subject to approval by the ~~state superintendent of banks, the~~ department. The bonds ~~to~~ shall be in ~~such~~ a form ~~as~~ which shall be provided and approved by the ~~state superintendent of banks,~~ department, and the bonds ~~to~~ shall be approved by the president of the building and loan association and his action reported to the board of directors. ~~All~~ All bonds required by this section ~~to~~ shall be kept in the custody of the building and loan association subject to inspection by ~~examiners from the office of~~ the ~~superintendent of banks, provided, as~~ department. As far as possible, ~~they shall~~ a bond may not be placed in the custody of the officer, agent, or employee for whom ~~the same~~ it is given."

Section 75. Section 7-119, R.C.M. 1947, is amended to

read as follows:

"7-119. Employment of agents -- licenses and revocation thereof. (1) It ~~shall be~~ is unlawful for ~~any~~ a building and loan association doing business ~~within the~~ in this state ~~of Montana~~ to employ ~~any~~ an agent for the purpose of soliciting loans ~~and/~~or the sale of stock in ~~the said~~ that association, unless he ~~shall~~ is first ~~be~~ licensed by the ~~superintendent of banks to solicit loans and/or sell the stock of said association and no~~ department. An agent representing ~~any~~ an association, foreign or domestic, doing business ~~within the~~ in this state ~~of Montana shall~~ may not solicit loans ~~and/~~or the sale of stock of any association unless he ~~shall~~ is first ~~be~~ licensed by the ~~superintendent of banks~~ department.

(2) ~~No~~ A license ~~shall~~ may not be issued to ~~any~~ an applicant for an agent's license until ~~such~~ the applicant ~~shall have~~ has first filed ~~in the office of~~ with the ~~superintendent of banks~~ department a written request from the building and loan association desiring to employ him as agent and has ~~made and~~ filed an application ~~therefor~~ upon a form ~~to be~~ prescribed and furnished by the ~~examiner, which~~ department. The application must show the applicant's name, business and residence address, community or district in which he wishes to act as agent, the name of the company to be represented, his occupation for the last twelve (12)

months and ~~such~~ other information ~~as~~ the ~~superintendent of banks~~ department may require. If the ~~superintendent of banks~~ department is satisfied that the applicant is a fit and proper person to engage in the solicitation of loans ~~and/~~or the sale of stock ~~he~~ it shall issue the license. The ~~superintendent of banks~~ department upon ten (10) days' notice to ~~any~~ an agent, and ~~upon~~ after a hearing ~~thereon~~, may revoke the license of ~~any~~ an agent upon the following grounds:

~~(1)~~--(a) ~~For misrepresentation~~ Misrepresentation;

~~(2)~~--(b) ~~If the said agent be convicted~~ Conviction in any court for violation of the criminal statutes;

~~(3)~~--(c) ~~When satisfied~~ Evidence sufficient to convince the department that ~~said~~ the agent is not a fit and proper person to ~~engage in the business of selling~~ sell building and loan association stock;

~~(4)~~--(3) ~~He~~ The department shall revoke the license of ~~any~~ an agent upon the request of ~~such~~ the association employing ~~such~~ the agent.

(4) Each license provided for in this ~~act shall expire~~ section expires on December ~~31st~~ 31 of each year, and for ~~the~~ issuance or renewal ~~thereof~~ the ~~superintendent of banks~~ department shall require a fee of two dollars ~~($2.00)~~ ($2)."

Section 76. Section 7-122, R.C.M. 1947, is renumbered section 84-7001 and amended to read as follows:

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"~~7-122~~ 84-7001. Taxation of associations. (1) Every building and loan or savings and loan association subject to regulation under Title 7, chapter 1, R.C.M. 1947, shall be assessed for and pay taxes upon all real and personal property owned by ~~such~~ the association, and also upon the moneyed capital employed in ~~such~~ the business~~7~~. ~~Such~~ The moneyed capital ~~to~~ shall be ascertained by deducting from the amount of bonds, notes and other evidences of indebtedness, including evidences of indebtedness secured by mortgage on real estate or personal property, of ~~such~~ the associations, the amount standing to the credit of the members of ~~any such~~ an association, upon its books, and any indebtedness representing money borrowed for use as moneyed capital. ~~Said~~ The moneyed capital as so ascertained shall be taxed at the same rate and take the same classification as shares of stock in a national bank or moneyed capital coming into substantial competition therewith. The secretary of ~~every such~~ an association shall furnish to the department of revenue or its agent in the county in which the principal office of ~~such~~ the association is located, within five (5) days after demand ~~therefor~~, a condensed statement verified by his oath, of the resources and liabilities of ~~such~~ the association as disclosed by its books, at ~~twelve--o'clock~~ 12 noon on the first Monday of March in each year~~7~~. ~~if such~~ If the secretary ~~shall--fail~~

fails to make the statement hereby required, the department or its agent shall ~~forthwith~~ immediately obtain ~~such~~ the information from any other available source, and for this purpose he shall have access to the books of ~~such~~ the association. The department or its agent shall thereupon make an assessment of the real estate and personal property owned by ~~such~~ the association, and of the moneyed capital employed in the business of ~~such~~ the association, which assessment shall be as fair and equitable as he may be able to make from the best information available, or ~~said~~ the assessor may, for the purpose of ~~said~~ the assessment, adopt the figures disclosed by any prior report made by ~~such~~ the association to any state or federal officer ~~pursuant to any~~ under a state or federal law. ~~Any~~ A person required by this section to make the statement ~~hereinabove~~ provided for in this section, who ~~shall--fail~~ fails to furnish ~~the same, shall be~~ it, is guilty of a misdemeanor ~~and--shall--be punished accordingly~~.

(2) The amount standing to the credit of each member of ~~any--such~~ an association, upon its books, shall be considered and held as the individual credit of each member, and each member shall list the shares held by him for taxation, at their real value in money, in the county of his residence, the same as other credits are listed, except shares from which loans have been made, or money advanced,

by the association, and as to such shares they shall be listed for taxation at the net cash value of the stock, to be ascertained by deducting the loan from the cash value of the shares. Associations organized under or controlled by ~~this act shall be~~ Title 7, chapter 1, are subject to taxation in no other way."

Section 77. Section 7-125, R.C.M. 1947, is amended to read as follows:

"7-125. Duties of ~~superintendent of banks~~ department. The ~~superintendent of banks~~ department shall examine all building and loan associations doing business in this state at least once a year. Also, ~~whenever~~ when the holders of ten per cent (10%) ~~of the holders~~ of the subscribed stock of ~~any~~ an association ~~files~~ file a written application with the ~~superintendent of banks~~ department, requesting ~~him~~ it to make a special examination of ~~any~~ an association, ~~he~~ it shall make ~~such~~ the examination ~~forthwith and the~~ immediately. The expense of the examiner making ~~such~~ the examination shall be paid by the association examined, and the examiner's finding ~~to~~ shall be available to the petitioners and the board of directors of the association notwithstanding any provisions to the contrary contained in this act."

Section 78. Section 7-126, R.C.M. 1947, is amended to read as follows:

"7-126. Powers of ~~superintendent of banks~~ department. ~~Such superintendent of banks shall have power to~~ The department may prescribe ~~for~~ and supervise a uniform system of reports, and accounting for all associations~~,~~. The department shall have access to and may compel the production of all books, papers, securities and moneys of any association under examination. ~~He shall have power to~~ It may administer oaths to and examine the officers and agents of ~~such~~ the association and its affairs."

Section 79. Section 7-127, R.C.M. 1947, is amended to read as follows:

"7-127. Reports of condition -- contents -- publication. ~~Every~~ A building and loan association shall make to the ~~superintendent of banks~~ department a report of condition ~~whenever~~ when requested to do so by the ~~superintendent of banks~~ department, according to the form which may be prescribed by ~~him~~ the department. The report shall be verified by the oath or affirmation of the president, vice-president, or secretary of ~~such~~ the association, and attested by the signature of at least two (2) of the directors. ~~Each such~~ The report shall exhibit in detail and under appropriate heads, the resources and liabilities of the association at the close of business on any past day ~~by him~~ specified; and shall be transmitted to the ~~superintendent of banks~~ department within five (5) days

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after the receipt of a request or requisition ~~therefor~~ for it from ~~him~~ the department and in ~~such~~ a form ~~as~~ which may be required by the ~~superintendent of banks it~~ department. It shall be published as soon as possible in a newspaper ~~published~~ in the place where ~~such~~ the association is established, or if there ~~be~~ is no newspaper published in the place, then in one published nearest thereto in the same county, at the expense of the association~~,~~. ~~and such proof~~ Proof of publication shall be furnished at ~~such~~ the times and in ~~such~~ the manner ~~as~~ which may be required by the ~~superintendent of banks~~ department."

Section 80. Section 7-131, R.C.M. 1947, is amended to read as follows:

"7-131. Foreign associations -- requirements. (1) ~~Any~~ An association as defined in ~~the foregoing~~ section 7-130 organized under the laws of any other state, ~~other than Montana, or~~ of the United States, or of any foreign government~~,~~ shall, before doing business ~~within~~ in this state, file ~~in the office of~~ with the secretary of state and ~~in the office of~~ the ~~superintendent of banks~~ department, a duly authenticated copy of their charter, articles of incorporation, or articles of agreement, and also a statement, verified by oath of the president and secretary of ~~such~~ the corporation or managing officials if other than a corporation, and duly verified, showing:

~~1.~~ (a) The name of ~~such~~ the association and the location of its principal office or place of business ~~without~~ outside this state; and the location of the place of business or principal office ~~within~~ in this state;

~~2.~~ (b) The names and residences of the officers, trustees or directors;

~~3.~~ (c) The amount of capital stock;

~~4.~~ (d) The amount of capital invested in the state of Montana.

(2) ~~Such~~ The association shall also file, at the same time~~,~~ and in the same offices, a certificate, ~~under seal and the signature of~~ signed by its president, vice-president, or other acting head, and by its secretary~~,~~ if there ~~be~~ is one, certifying that the ~~said~~ association has consented to all the license laws and other laws of ~~the~~ this state ~~of Montana~~ relative to foreign associations and has consented to be sued in the courts of this state, upon all causes of action arising against it in this state, and that service of process may be made upon ~~some person~~ a citizen of this state, whose name and place of residence shall be designated in ~~such~~ the certificate~~, and such service, when so made upon such~~. Service of process on that agent~~, shall be~~ is valid service on the association."

Section 81. Section 7-136, R.C.M. 1947, is amended to read as follows:

"7-136. Conformity required. The powers, rights, duties, privileges, and obligations of every ~~such~~ association ~~heretofore--and--hereafter~~ organized and doing business in ~~the~~ a form ~~of--a--character~~ similar to that authorized by this act, shall be governed, controlled, construed, extended, limited, and determined by the provisions of this act, to the same extent and effect as if ~~said~~ the association had been organized and incorporated under or pursuant to its provisions, and the articles of incorporation, bylaws and rules of each heretofore made or existing are hereby modified, altered and amended to conform with the provisions of this act and the same are declared void where ~~such~~ the articles of incorporation, bylaws or rules are inconsistent with its provisions; except that the obligations of any existing association, whether between ~~such~~ the association and its shareholders or any one of them, or any other person or persons, or any valid contract between the shareholders of the association existing at the time this act takes effect, shall not be in any way impaired by the provisions of this act; and with ~~such~~ these exceptions every building and loan association shall possess the powers, rights, duties and privileges, and be subject to the obligations, restrictions and liabilities conferred and imposed by this act, notwithstanding anything to the contrary in its articles of incorporation, bylaws or rules.

All obligations to ~~any--such~~ the association heretofore contracted shall be enforceable by it and in its name and demands, claims and rights of action against ~~any--such~~ the association shall be enforced against it as fully and completely as they might have been enforced before. Except as above set forth, on and after six months after the passage and approval of this act, no domestic or foreign association now engaged in the business of a building and loan association, or a business of like character, shall be permitted to conduct ~~such~~ that business in this state unless it ~~comply~~ complies in every respect with the provisions of this act."

Section 82. Section 7-138, R.C.M. 1947, is amended to read as follows:

"7-138. ~~Superintendent of banks~~ Department report. The ~~superintendent--of--banks~~ department shall ~~keep and~~ preserve in permanent form a full record of ~~his~~ its proceedings, including a concise statement of each association examined, and ~~he~~ it shall annually make a report to the governor of the general conduct and condition of the building and loan associations doing business in this state, with ~~such~~ those suggestions as ~~he may deem~~ it considers expedient. ~~Such~~ The report shall also include the information contained in the statement required of the association, and arranged in tabulated form. ~~He--shall--also--report--the--whole--amount--of--the--income--of--his--office,--the--source--whence--derived,--and--the~~

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~~expenses-in-detail-during-the-year-ending-on-the-30th-day-of June.~~"

Section 83. Section 7-139, R.C.M. 1947, is amended to read as follows:

"7-139. Obtaining property by fraud, false report, refusal to permit inspection of books. A director, officer, agent, or employee of ~~any~~ a building and loan association who:

(1) Willfully receives or possesses ~~himself of~~ any of its property, otherwise than in payment for a just demand, and with intent to defraud, omits to make ~~or cause~~ or direct to be made a full and true entry ~~thereof~~ of it in its books and accounts; ~~or~~

(2) Concurs in omitting to make ~~any~~ a material entry thereof; ~~or~~

(3) Willfully makes or concurs in making or publishing ~~any~~ a written report, exhibit or statement of ~~its~~ the association's affairs or pecuniary condition, containing any material statement which is false; or

(4) Having the custody or control of ~~its~~ the association's books, willfully refuses or neglects to make ~~any~~ a proper entry in the books ~~of such association~~ as required by law, or to exhibit, or allow ~~the same~~ them to be inspected and extracts to be taken ~~therefrom~~ from them by the ~~superintendent of banks, his chief deputy, or any of his~~

~~examiners, shall be~~ department is guilty of a felony."

Section 84. Section 7-147, R.C.M. 1947, is amended to read as follows:

"7-147. Reports and examinations by ~~superintendent of banks~~ department confidential. ~~Whoever, being the superintendent of banks, assistant or clerk in his employ or an examiner,~~ (1) An employee or agent of the department, who fails to keep secret the facts and information obtained in the course of an examination, or by reason of his official position, except when the public duty of ~~such~~ that officer requires him to report upon or take official action regarding the affairs of the association so examined, or willfully makes a false official report as to the conditions of ~~such~~ the association, shall be removed from office and shall be fined not more than five hundred dollars ~~($500.00)~~ ($500), or imprisoned in the penitentiary not less than two (2) years nor more than five (5) years, or both. Nothing in this section ~~shall prevent~~ prevents the proper exchange of information, relating to building and loan associations and ~~the~~ their business ~~thereof~~, with the representatives of building and loan departments of other states, but in no case shall the private business or affairs of ~~any~~ an individual, association, or company be disclosed, ~~provided, that the superintendent of banks~~ The department on request of any federal home loan bank, shall furnish ~~such~~

that bank any information ~~he~~ it may have relative to the finances, manner of business, methods of bookkeeping, and any ~~and all~~ other information relating to ~~any~~ an association which is a member of, seeking to become a member of, a borrower from, or seeking to become a borrower from, ~~any~~ a federal home loan bank.

(2) ~~Also any~~ An association, ~~and/or~~ the officers or agents thereof, and the ~~superintendent of banks and/or his assistants and examiners shall be authorized to~~ department may do ~~any and all things~~ anything necessary to enable ~~any~~ a building and loan association within this state to become a member of the federal home loan bank of this or any adjoining district so far as may be compatible with the constitution of this state and the laws of the United States."

Section 85. Section 7-149, R.C.M. 1947, is amended to read as follows:

"7-149. Voluntary liquidation and settlement. ~~By and with~~ With the consent of the ~~superintendent of banks any~~ department an association organized under the laws of and doing business in this state, may, if the stockholders ~~deem~~ consider it advisable, go into liquidation. ~~and for~~ For the purpose of so doing it may, at any regular or called meeting of the stockholders, adopt a resolution declaring that ~~such~~ the association intends to go into liquidation and

discontinue business as a building and loan association. A copy of ~~such~~ the resolution, duly certified by the president and secretary of ~~such~~ the association, under the seal thereof, shall be transmitted to the ~~superintendent of banks~~ department within ten (10) days after ~~the~~ its passage ~~thereof. Thereupon the superintendent of banks~~ The department shall then issue ~~his~~ its certificate reciting that ~~such~~ the resolution has been filed in ~~his~~ its office, and that ~~such~~ the association is in liquidation. After the filing of ~~such~~ the notice, it ~~shall not be lawful~~ is unlawful for ~~such~~ the association to issue stock, or to loan or advance its money to members or to any other person. ~~or persons, but all~~ All of the income and receipts of ~~such~~ the association, in excess of the actual expense of managing ~~the same~~ it, shall be applied to pay off first the indebtedness and then the stock in ~~such~~ the association upon which no loans have been made, the same to be paid pro rata. The board of directors of ~~such~~ the association in liquidation may adopt ~~such~~ those rules and make ~~such~~ those orders ~~as shall be~~ which are just and equitable for the sale and disposition of all property held by ~~such~~ the association and for the division of the assets of ~~such~~ the association. ~~Such~~ The association in liquidation ~~shall~~ may be ~~subject to examination~~ examined by, and shall be under the supervision of the ~~superintendent of banks~~ department."

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Section 86. Section 7-150, R.C.M. 1947, is amended to read as follows:

"7-150. Insolvency or impairment of building and loan association -- powers of ~~superintendent of banks~~ department. ~~Whenever~~ When it ~~shall appear~~ appears to the ~~superintendent of banks~~ department that the affairs of ~~any~~ a building and loan association are in an unsound condition, or that it is conducting its business in an unsafe or unlawful manner, the ~~superintendent of banks~~ department may take possession of all books, records, and assets of every description of ~~such~~ the association and ~~hold and~~ retain ~~the~~ possession of ~~same~~ them pending the further proceedings ~~herein~~ specified in this section. ~~Should~~ If the board of directors, secretary, or person in charge of ~~such~~ the association ~~refuse~~ refuses to permit the ~~superintendent of banks~~ department to take possession ~~as aforesaid~~, the ~~superintendent of banks~~ department shall communicate ~~such~~ that fact to the attorney general~~,~~. ~~whereupon it shall become the duty of the~~ The attorney general shall at once ~~to~~ institute ~~such~~ the proceedings ~~as may be~~ necessary to place the ~~superintendent of banks~~ department in immediate possession of the property of ~~such~~ the association. Upon taking possession of the effects of the association ~~as aforesaid~~, the ~~superintendent of banks~~ department shall prepare a full and true statement of the affairs and condition of ~~such~~ the association,

including an itemized statement of its assets and liabilities and shall receive and collect all debts, dues and claims belonging to it and pay the immediate and reasonable expenses of ~~his~~ the department's trust. When the condition of ~~such~~ the association has been fully ascertained and it ~~shall appear~~ appears that the affairs of ~~said~~ the association are in fact in an unsound condition the ~~superintendent of banks~~ department shall at once notify, in writing, the board of directors of ~~such~~ the association of ~~his~~ its decision, giving them twenty (20) days in which to restore the affairs of ~~such~~ the association to sound condition. Meanwhile, the ~~superintendent of banks~~ department shall remain in charge of the books, records, and assets of every description of ~~such~~ the association, shall attend~~,~~ or be represented~~,~~ at all directors and stockholders meetings held, and shall suggest ~~such~~ those steps ~~as he may deem~~ it considers necessary to restore ~~such~~ the association to a sound condition~~,~~. ~~and if same~~ If the association is not ~~done~~ restored to a sound condition within ~~such~~ twenty (20) days, ~~he~~ the department shall report the facts to the attorney general. ~~and it shall thereupon become the duty of the~~ The attorney general ~~to~~ shall institute proceedings in the district court of the county in which ~~such~~ the association has its principal place of business, for the appointment of the ~~superintendent of banks~~ department as

receiver. ~~and as such he is authorized to~~ As receiver, the department may collect all moneys due ~~such~~ the association and ~~to~~ may do ~~such~~ those other acts ~~as~~ which are necessary to conserve its assets and business, and ~~he~~ it shall ~~proceed to~~ liquidate ~~its~~ the association's affairs. ~~He shall have general and inclusive power and authority~~ The department may, except as otherwise limited by the terms of this act, ~~to~~ do any ~~and all~~ acts~~, to take any and all steps~~ necessary~~,~~ or, in ~~his~~ its discretion, desirable for the protection of the property and assets of ~~such~~ the association and the speedy and economical liquidation of its assets and affairs and the payment of its creditors, or for the ~~reopening and~~ resumption of business of ~~said~~ the association where that is practicable or desirable. ~~He~~ The department may institute in ~~his~~ its own name as ~~superintendent of banks~~, or in the name of the association, ~~such suits and actions and other~~ those legal proceedings ~~as he deems~~ it considers expedient for ~~such~~ those purposes~~,~~. ~~and by making application~~ By applying to the district court of the county in which ~~such~~ the association is located, or to the judge thereof, in chambers, the department may, upon ~~proper and~~ sufficient showing of cause ~~therefor, procure~~ obtain an order to sell, compromise or compound any bad or doubtful debt or claim, and to sell ~~and dispose of~~ any ~~or all~~ of the assets~~,~~. ~~which~~ The sale may be made to stockholders, officers, directors,

or others interested in ~~such~~ the association, on consent of the court. On ~~such~~ the proceedings the association shall be made a party by notice issued on order of the court or judge, in ~~lieu~~ place of summons, but served in like manner~~,~~. ~~and the~~ The hearing of ~~any such~~ the application or petition by the ~~superintendent of banks~~ department may be had at any time, either in term or vacation in court, or in chambers, as the court may order, after ~~said~~ the association has had five (5) days' notice of ~~such~~ the application."

Section 87. Section 14-131, R.C.M. 1947, is amended to read as follows:

"14-131. Definitions. ~~As used~~ Unless the context requires otherwise, in this act. (1) ~~The term "credit~~ "Credit union" means a co-operative association organized in accordance with ~~the provisions of~~ this act for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes. ~~Such~~ Those organizations shall have perpetual succession and shall be organized under and governed solely by ~~the provisions of~~ this act;

(2) ~~The term "department"~~ "Department" means the department of ~~banking, state of Montana, and~~ business regulation as provided for in Title 82A, chapter 4.

~~(3) The term "supervisor" means the state examiner, ex officio superintendent of banks, state of Montana;~~"

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Section 88. Section 14-132, R.C.M. 1947, is amended to read as follows:

"14-132. Reports, examinations and fees. Credit unions ~~shall--be~~ are under the supervision of the ~~supervisor~~ department and shall make financial reports to ~~him~~ it as and when ~~he~~ it may require, but at least semiannually. ~~Each~~ A credit union ~~shall-be~~ is subject to ~~a--regular~~ examination annually by, and for this purpose shall make its books and records accessible to, ~~any--person--designated---by~~ the ~~supervisor;---except---that---special~~ department. Special examinations may be made more frequently where there is ~~clear--and~~ incontrovertible evidence of immediate danger or damage to, or impairment of, members' shareholdings. Accountants or representatives of the Montana credit unions league may be designated examiners by the ~~supervisor~~ department. If the examination is not made by the ~~state examiner~~ department, the expense of ~~such~~ the examination shall be borne by the credit union examined, and ~~such~~ the examination shall be in ~~such~~ the form and contain ~~such~~ the information ~~as~~ the ~~state--examiner-may-require~~ department requires. Fees assessed for examinations by the ~~supervisor~~ department shall not exceed the following schedule: The first $25,000 of assets ~~to~~ shall be assessed at $.22 per $100 of assets, the next $75,000 of assets ~~to~~ shall be assessed at $.20 per $100 of assets, the next $100,000 of

assets ~~to~~ shall be assessed at $.18 per $100 of assets, the next $300,000 of assets ~~to~~ shall be assessed at $.14 per $100 of assets, the next $500,000 of assets ~~to~~ shall be assessed at $.10 per $100 of assets, and assets in excess of $1,000,000 shall be assessed at $.03 per $100 of assets. The minimum fee chargeable ~~shall-be~~ is $17."

Section 89. Section 14-133, R.C.M. 1947, is amended to read as follows:

"14-133. Incorporation. (1) ~~Whenever~~ When any number of persons not less than seven (7) who are domiciled in this state ~~shall~~ desire to incorporate a credit union having for its object the conduct and operation of ~~such~~ an organization as defined in this act, they shall ~~prepare-and~~ file articles of incorporation to that effect in the manner in this act specified~~;~~. ~~such~~ The articles shall be signed, sealed, and acknowledged in the form ~~now~~ provided by the statutes of this state for the conveyance of real estate and shall include ~~the-following~~:

~~(1)~~--(a) The name, which ~~shall~~ may not be the same or too closely resembling that in use by ~~any~~ an existing corporation established under the laws of the state. The words "credit union" shall form a part of the name and no person, corporation, copartnership, association, or other form of organization ~~shall-be-entitled-to~~ may use a name employing ~~said~~ that combination of words except as provided

in section 14-137.

~~(2)~~--(b) The principal office, or place of business which shall be ~~within~~ in this state.

~~(3)~~--(c) The term of existence of the organization, which shall be perpetual.

~~(4)~~--(d) The par value of shares of the credit union, which shall be five dollars ($5) each.

~~(5)~~--(e) A provision that ~~such~~ the credit union shall be organized under this ~~act~~ chapter for the purposes ~~set~~ forth ~~therein~~ in it.

~~(6)~~--(f) The names, occupations and addresses of the subscribers to the articles of incorporation and the number of shares subscribed by each.

(2) The articles of incorporation shall be presented to the ~~supervisor~~ department with the bylaws of the proposed credit union, and ~~he~~ it shall within thirty (30) days of the receipt of ~~said~~ the articles of incorporation and bylaws, determine whether they conform with the provisions of this act, and whether ~~or not~~ the organization of the credit union would benefit its members and be consistent with the purposes of this act. ~~Thereupon, the supervisor~~ The department shall promptly notify the applicant of ~~his~~ its decision. If it is favorable, the ~~supervisor~~ department shall, at the time of issuing ~~such~~ the notice, attach ~~his~~ its written approval to the articles of incorporation. If

it is unfavorable, the ~~supervisor~~ department shall, at the time of issuing ~~such~~ the notice, state ~~his~~ its reasons ~~therefor~~ for its decision.

(3) ~~Said~~ The articles of incorporation shall then be filed with the secretary of state who, upon payment of the filing fees ~~therefor~~ for them, shall issue a certificate of incorporation over the great seal of the state of Montana; and a copy thereof, certified by the secretary of state, shall be filed in the office of the county clerk of the county in which the principal place of business of the credit union is located."

Section 90. Section 14-136, R.C.M. 1947, is amended to read as follows:

"14-136. Bylaws. (1) In order to simplify the organization of credit unions the ~~supervisor~~ department shall from time to time ~~cause to be prepared~~ prepare a form of articles of incorporation and a form of bylaws, consistent with this act, which shall be used by credit union incorporators, and shall be supplied to them on request. At the time of presenting the articles of incorporation the incorporators shall also submit proposed bylaws to the ~~supervisor~~ department for ~~his~~ its approval.

(2) The bylaws may be amended in the manner provided ~~therein~~ in them, except that no amendments ~~thereto shall~~ ~~thereafter~~ to them become operative until they have been

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approved by the ~~supervisor~~ department."

Section 91. Section 14-152, R.C.M. 1947, is amended to read as follows:

"14-152. Certain powers of ~~supervisor~~ department. ~~(1)~~ The ~~supervisor~~ department may ~~prescribe~~ adopt rules ~~and regulations~~ for the administration of the act ~~(~~including, but not ~~by--way--of--limitation~~ limited to, the merger, consolidation, and dissolution of credit unions organized under this act~~)~~.

~~(2)--Any-credit-union-may,-with--the--approval--of--the supervisor,--and--in--accordance-with-such-uniform-rules-and regulations-as-he-shall-make-and-promulgate-be--merged--with another--credit--union,--provided--the-membership-of-the-one credit-union-is-within-the-field-of-membership-of-the-other, under-the-existing--certificate--of--incorporation--of--such other--credit-union,-pursuant-to-any-plan-agreed-upon-by-the majority-of-the-board-of--directors--of--each--credit--union joining--in-the-merger,-and-approved-by-the-affirmative-vote of-a-majority-of-the-members--of--each--such--credit--union, either--at--meetings--of--the--members,-duly-called-for-such purpose-or-in-writing.--All-property,--property--rights--and interest--of--the--credit--union--so-merging-shall-upon-such merger-be-transferred-to-and--vested--in--the--credit--union under--whose--certificate--of--incorporation--the--merger-is effected-without-deed,-endorsement,-or-other--instrument--of transfer,--and-the-debts-and-obligations-of-the-credit-union so-merging-shall-be-deemed--to--have--been--assumed--by--the credit--union--under--whose-certificate-of-incorporation-the merger--is--effected,--and--thereafter--the--certificate--of incorporation--of--the-credit-union-so-merging-shall-be-null and-void-and-it-shall-cease-to-exist.--Upon-payment--of--the filing-fees-provided-in-section-14-155,-the-supervisor-shall file--the-certificate-of-merger-with-the-secretary-of-state, and-a-copy-thereof,-certified-by--the--secretary--of--state, shall--be--filed--in--the--office-of-the-county-clerk-of-the county-in-which-the--principal--place--of--business--of--the merged--credit--union--is--located.---This--section-shall-be construed,--whenever--possible--to--permit--a--credit--union incorporated---under---any--other--act--to--merge--with--one incorporated-under-this-act,-or-to-permit--one--incorporated under--this--act--to--merge--with-one-incorporated-under-any other-act.

~~(3)--The-proposition-of-voluntary--dissolution--may--be considered--at--a--membership-meeting-especially-called-by-a four-fifths-(4/5)-vote-of-the--board--of--directors--of--the credit--union-on-a-date-set-by-said-board-for-a-vote-thereon by-the-members-(either-at-a-meeting-to-be-held-on-such--date or--by--written-ballot-to-be-filed-with-the-secretary-before such-date).--Written-notice-of-the-proposition--and--of--the date--set--for-the-vote-shall-then-be-delivered-in-person-to~~

each member, or mailed to each member at the address for such member appearing on the records of the credit union, not more than thirty (30) days and not less than ten (10) days prior to such date. At the same time, a copy of said notice shall also be mailed to the supervisor. Approval of the proposition for voluntary dissolution shall be by the affirmative vote of a majority of the members, in person or in writing. A statement of the results of the vote, verified by the affidavits of the president or vice-president and the secretary, shall be filed with the supervisor within five (5) days after the vote is taken, and there shall be included with the affidavits, a list of the names of the directors and officers of the credit union together with their addresses. If the proposition for voluntary dissolution is approved by such vote, the credit union shall thereupon immediately cease to do business except for the purpose of liquidation.

(4) (a) The supervisor may suspend or revoke the certificate of incorporation of any credit union, or place the same in involuntary liquidation and appoint a liquidating agent therefore (therefor), upon his finding that the credit union is bankrupt or insolvent, or has violated any of the provisions of its certificate of incorporation, its bylaws, this act, or any regulations issued thereunder.

(b) The supervisor through such persons as he shall designate, may examine any credit union in voluntary liquidation and, upon his finding that such voluntary liquidation is not being conducted in an orderly or efficient manner or in the best interests of its members, may after holding a hearing or giving adequate opportunity for a hearing, order such credit union to correct such condition and shall grant it not less than sixty (60) days within which to comply, and failure to do so shall afford the supervisor grounds for terminating such voluntary liquidation and place such credit union in involuntary liquidation and appoint a liquidating agent therefor.

(c) Such liquidating agent shall have power and authority, subject to the control and supervision of the supervisor and under such rules and regulations as the supervisor may prescribe,

(i) To receive and take possession of the books, records, assets, and property of every description of the credit union in liquidation, to sell, enforce collection of, and liquidate all such assets and property, to compound all bad or doubtful debts, and to sue in his own name or in the name of the credit union in liquidation, and defend such actions as may be brought against him as liquidating agent or against the credit union,

(ii) To receive, examine, and pass upon all claims

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against the credit union in liquidation, including claims of members on shares;

(iii) To make distribution and payment to creditors and members as their interests may appear; and

(iv) To execute such documents and papers and to do such other acts and things which he may deem necessary or desirable to discharge his duties hereunder.

(d) Subject to the control and supervision of the supervisor and under such rules and regulations as the supervisor may prescribe, the liquidating agent of a credit union in involuntary liquidation shall

(i) Cause notice to be given to creditors and members to present their claims and make legal proof thereof, which notice shall be published once a week in each of three (3) successive weeks in a newspaper of general circulation in the county in which the credit union in liquidation maintained an office for the transaction of business on the date it ceased unrestricted operations; except that whenever the aggregate book value of the assets and property of a credit union in involuntary liquidation is less than $10,000 unless the supervisor shall find that its books and records do not contain a true and accurate record of its liabilities, he shall declare such credit union in liquidation to be a "no publication" liquidation, and publication of notice to creditors and members shall not be

required in such case;

(ii) From time to time make a ratable dividend on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction and, after the assets of such credit union have been liquidated, make further dividends on all claims previously proved or adjudicated, and he may accept in lieu of a formal proof of claim on behalf of any creditor or member the statement of any amount due to such creditor or member as shown on the books and records of the credit union, but all claims not filed before payment of the final dividend shall be barred and claims rejected or disallowed by the liquidating agent shall be likewise barred unless suit be instituted thereon within three (3) months after notice of rejection or disallowance; and

(iii) In a "no publication" liquidation, determine from all sources available to him, and within the limits of available funds of the credit union, the amounts due to creditors and members, and after sixty (60) days shall have elapsed from the date of his appointment distribute the funds of the credit union to creditors and members ratably and as their interests may appear.

(e) Upon certification by the liquidating agent in the case of an involuntary liquidation, and upon such proof as shall be satisfactory to the supervisor in the case of a

voluntary liquidation, that distribution has been made and that liquidation has been completed, as provided herein, the supervisor shall cancel the certificate of incorporation of such credit union by issuing a certificate of dissolution on form prescribed by him, and file the same with the secretary of state, and a copy thereof shall be filed in the office of the county clerk of the county in which the principal place of business of the credit union is located, but the corporate existence of the credit union shall continue for a period of three (3) years from the date of such cancellation of its certificate of incorporation, during which period the liquidating agent, or his duly appointed successor, or such persons as the supervisor shall designate, may act on behalf of the credit union for the purpose of paying, satisfying, and discharging any existing liabilities or obligations, collecting and distributing its assets, and doing all other acts required to adjust and wind up its business and affairs, and it may sue and be sued in its corporate name.

(5) After the expiration of eight (8) years from the date of cancellation of the certificate of incorporation of a credit union the supervisor may, in his discretion, destroy any or all books and records of such credit union in his possession or under his control.

(6) The supervisor is authorized and empowered to execute any and all functions and perform any and all duties

vested in him hereby, through such persons as he shall designate or employ, and he may delegate to any person or persons, including any institution operating under the general supervision of the department, the performance and discharge of any authority, power, or function vested in him by this act.

(7) Any officer or employee of the department is authorized, when designated for the purpose by the supervisor to administer oaths and affirmations and to take affidavits and depositions touching upon any matter within the jurisdiction of the department as related to this act.

(8) The supervisor is authorized, empowered, and directed to require that every person appointed or elected by any credit union to any position requiring the receipt, payment, or custody of money or other personal property owned by a credit union, or in its custody or control as collateral or otherwise, give bond in a corporate surety company licensed to do business in the state of Montana. Any such bond or bonds shall be in a form approved by the supervisor with a view to providing surety coverage to the credit union with reference to loss by reason of acts of fraud or dishonesty including forgery, theft, embezzlement, wrongful abstraction, or misapplication on the part of the person, directly or through connivance with others, and such other surety coverages as the supervisor may determine to be

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~~reasonably-appropriate-or-as-elsewhere-required-by-this-act.~~
~~Any--such--bond--or--bonds--shall--be--in--such-an-amount-in~~
~~relation-to-the-money-or-other-personal-property-involved-or~~
~~in-relation-to--the--assets--of--the--credit--union--as--the~~
~~supervisor-may-from-time-to-time-prescribe-by-regulation-for~~
~~the--purpose--of--requiring-reasonable-coverage.--In-lieu-of~~
~~individual-bonds-the-supervisor-may-approve--the--use--of--a~~
~~form--of--schedule--or--blanket-bond-which-covers-all-of-the~~
~~officers-and--employees--of--a--credit--union--whose--duties~~
~~include--the--receipt,-payment,-or-custody-of-money-or-other~~
~~personal-property-for-or-on-behalf-of-the-credit-union.--The~~
~~supervisor-may-also-approve-the-use--of--a--form--of--excess~~
~~coverage-bond-whereby-a-credit-union-may-obtain-an-amount-of~~
~~coverage-in-excess-of-the-basic-surety-coverage.~~"

Section 92. There is a new section to be numbered 14-152.1, R.C.M. 1947, which reads as follows:

14-152.1. Merger. A credit union may, with the approval of the department, and in accordance with uniform rules which the department adopts, be merged with another credit union, provided the membership of the one credit union is within the field of membership of the other. Mergers shall be under the existing certificate of incorporation of the other credit union, under any plan agreed upon by the majority of the board of directors of each credit union joining in the merger, and approved by the

affirmative vote of a majority of the members of each credit union, either at meetings of the members, called for that purpose or in writing. All property, property rights, and interest of the credit union so merging shall upon such merger be transferred to and vested in the credit union under whose certificate of incorporation the merger is effected without deed, endorsement, or other instrument of transfer, and the debts and obligations of the credit union so merging shall be considered assumed by the credit union under whose certificate of incorporation the merger is effected. The certificate of incorporation of the credit union so merging is then void and it shall cease to exist. Upon payment of the filing fees provided in section 14-155, the department shall file the certificate of merger with the secretary of state, and a copy thereof, certified by the secretary of state, shall be filed in the office of the county clerk of the county in which the principal place of business of the merged credit union is located. This section shall be construed, whenever possible, to permit a credit union incorporated under any other act to merge with one incorporated under this act, or to permit one incorporated under this act to merge with one incorporated under any other act.

Section 93. There is a new section to be numbered 14-152.2, R.C.M. 1947, which reads as follows:

14-152.2. Voluntary dissolution and liquidation. The proposition of voluntary dissolution may be considered at a membership meeting especially called by a four-fifths (4/5) vote of the board of directors of the credit union on a date set by the board for a vote by the members (either at a meeting to be held on that date or by written ballot to be filed with the secretary before that date). Written notice of the proposition and of the date set for the vote shall then be delivered in person to each member, or mailed to each member at the address for that member appearing on the records of the credit union, not more than thirty (30) days and not less than ten (10) days before that date. At the same time, a copy of the notice shall also be mailed to the department. Approval of the proposition for voluntary dissolution shall be by the affirmative vote of a majority of the members, in person or in writing. A statement of the results of the vote, verified by the affidavits of the president or vice-president and the secretary, shall be filed with the department within five (5) days after the vote is taken, and there shall be included with the affidavits, a list of the names of the directors and officers of the credit union together with their addresses. If the proposition for voluntary dissolution is approved by the vote, the credit union shall immediately cease to do business except for the purpose of liquidation.

Section 94. There is a new section to be numbered 14-152.3, R.C.M. 1947, which reads as follows:

14-152.3. Involuntary liquidation. (1) The department may suspend or revoke the certificate of incorporation of a credit union, or place it in involuntary liquidation and appoint a liquidating agent for it, upon its finding that the credit union is bankrupt or insolvent, or has violated any of the provisions of its certificate of incorporation, its bylaws, this act, or any rules issued under it.

(2) The department may examine a credit union in voluntary liquidation and, upon its finding that the voluntary liquidation is not being conducted in an orderly or efficient manner or in the best interests of its members, may after holding a hearing or giving adequate opportunity for a hearing, order that credit union to correct the condition and shall grant it not less than sixty (60) days within which to comply. Failure to do so gives the department grounds to terminate the voluntary liquidation and to place the credit union in involuntary liquidation and to appoint a liquidating agent for it.

(3) The liquidating agent may, subject to the control and supervision of the department and under those rules the department may prescribe:

(a) Receive and take possession of the books, records, assets, and property of every description of the credit

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union in liquidation; sell, enforce collection of, and liquidate all the assets and property; compound all bad or doubtful debts; sue in his own name or in the name of the credit union in liquidation; and defend actions which may be brought against him as liquidating agent or against the credit union;

(b) Receive, examine, and pass upon all claims against the credit union in liquidation, including claims of members on shares;

(c) Make distribution and payment to creditors and members as their interests appear; and

(d) Execute those documents and papers and do those other acts and things which he considers necessary or desirable to discharge his duties.

(4) Subject to the control and supervision of the department and under rules the department may prescribe, the liquidating agent of a credit union in involuntary liquidation shall:

(a) Give notice to creditors and members to present their claims and make legal proof of them, which notice shall be published once a week in each of three (3) successive weeks in a newspaper of general circulation in the county in which the credit union in liquidation maintained an office for the transaction of business on the date it ceased unrestricted operations; except that when the

aggregate book value of the assets and property of a credit union in involuntary liquidation is less than ten thousand dollars ($10,000), unless the department finds that its books and records do not contain a true and accurate record of its liabilities, the liquidating agent shall declare the credit union in liquidation to be a "no publication" liquidation, and publication of notice to creditors and members shall not be required in that case;

(b) From time to time make a ratable dividend on all claims which have been proved to his satisfaction or adjudicated in a court of competent jurisdiction and, after the assets of the credit union have been liquidated, make further dividends on all claims previously proved or adjudicated, and he may accept in place of a formal proof of claim on behalf of any creditor or member the statement of any amount due to that creditor or members as shown on the books and records of the credit union; but all claims not filed before payment of the final dividend are barred and claims rejected or disallowed by the liquidating agent are likewise barred unless sued upon within three (3) months after notice of rejection or disallowance; and

(c) In a "no publication" liquidation, determine from all sources available to him, and within the limits of available funds of the credit union, the amounts due to creditors and members, and after sixty (60) days have

elapsed from the date of his appointment distribute the funds of the credit union to creditors and members ratably and as their interests appear.

Section 95. There is a new section to be numbered 14-152.4, R.C.M. 1947, which reads as follows:

14-152.4. Certificate of dissolution. Upon certification by the liquidating agent in the case of an involuntary liquidation, and upon proof satisfactory to the department in the case of a voluntary liquidation, that distribution has been made and that liquidation has been completed, as provided in this section, the department shall cancel the certificate of incorporation of the credit union by issuing a certificate of dissolution on a form prescribed by the department, and file it with the secretary of state, and a copy thereof shall be filed in the office of the county clerk of the county in which the principal place of business of the credit union is located. The corporate existence of the credit union continues for a period of three (3) years from the date of cancellation of its certificate of incorporation, during which period the liquidating agent, or his duly appointed successor, or those persons the department shall designate, may act on behalf of the credit union for the purpose of paying, satisfying, and discharging any existing liabilities or obligations, collecting and distributing its assets, and doing all other

acts required to adjust and wind up its business, and it may sue and be sued in its corporate name.

Section 96. There is a new section to be numbered 14-152.5, R.C.M. 1947, which reads as follows:

14-152.5. Destruction of records. After the expiration of eight (8) years from the date of cancellation of the certificate of incorporation of a credit union the department may, in its discretion, destroy any books and records of the credit union in its possession or under its control.

Section 97. There is a new section to be numbered 14-152.6, R.C.M. 1947, which reads as follows:

14-152.6. Oaths. The department may administer oaths and affirmations and take affidavits and depositions regarding any matter within the jurisdiction of the department as related to this act.

Section 98. There is a new section to be numbered 14-152.7, R.C.M. 1947, which reads as follows:

14-152.7. Surety bonds. The department shall require that every person appointed or elected by a credit union to a position requiring the receipt, payment, or custody, of money or other personal property owned by a credit union, or in its custody or control as collateral or otherwise, give bond in a corporate surety company licensed to do business in this state. The bond shall be in a form approved by the

department and shall provide surety coverage to the credit union for loss by reason of acts of fraud or dishonesty including forgery, theft, embezzlement, wrongful abstraction, or misapplication on the part of the person, directly or through connivance with others, and other surety coverages the department determines to be reasonably appropriate or as elsewhere required by this act. The bond shall be in an amount, in relation to the money or other personal property involved or in relation to the assets of the credit union, which the department may from time to time prescribe by rule for the purpose of requiring reasonable coverage. In place of individual bonds the department may approve the use of a form of schedule or blanket bond which covers all of the officers and employees of a credit union whose duties include the receipt, payment, or custody of money or other personal property. The department may also approve the use of a form of excess coverage bond whereby a credit union may obtain an amount of coverage in excess of the basic surety coverage.

Section 99. Section 15-2614, R.C.M. 1947, is amended to read as follows:

"15-2614. Control -- supervision -- reports. The corporation ~~shall--be~~ is subject to the examination of the ~~state--superintendent--of--banks~~ department of business regulation, and shall make reports of its condition not less

than annually to ~~said-superintendent,-who~~ that department, which in turn shall make copies of ~~such~~ the reports available to the commissioner of insurance and to the governor. The corporation shall also file an annual statement required by Title 15, ~~Revised-Codes-of-Montana~~ R.C.M. 1947."

Section 100. Section 27-402, R.C.M. 1947, is amended to read as follows:

"27-402. General purpose. The general purpose of this ~~law~~ chapter is to protect and promote public welfare and to eliminate unfair and demoralizing trade practices in the milk industry. It is enacted in the exercise of the police powers of the state."

Section 101. Section 27-403, R.C.M. 1947, is amended to read as follows:

"27-403. Definitions. ~~As-used-in-this-act,-unless--the-context--otherwise--requires,-"board"-means-the-state-agency-created-by-this-act,-to-be-known-as-the-Montana-milk-control-board.~~ (1) Unless the context requires otherwise, in this chapter:

(a) "Board" means the board of milk control provided for in section 82A-406.

(b) "Person" means ~~any~~ a person, firm, corporation, or co-operative association.

(c) "Producer" means ~~any~~ a person who produces milk

for consumption ~~within the~~ in this state, selling ~~same~~ it to a distributor.

(d) "Department" means the department of business regulation provided for in Title 82A, chapter 4.

(e) "Distributor" means ~~any~~ a person purchasing milk from any source, either in bulk or in packages, and distributing ~~same~~ it for consumption ~~within the~~ in this state. ~~Said~~ The term includes what are commonly known as jobbers and independent contractors. ~~Said~~ The term, however, excludes ~~all persons~~ a person purchasing milk from a dealer licensed under this ~~act~~ chapter, for resale over the counter at retail, or for consumption on the premises.

(f) "Producer-distributor" means ~~any~~ a person both producing and distributing milk for consumption ~~within the~~ in this state.

(g) "Retailer" means ~~any~~ a person selling milk in bulk or in packages over the counter at retail, or for consumption on the premises, and includes, but is not limited to, retail stores of all types, restaurants, boarding-houses, fraternities, sororities, confectionaries, public and private schools, including colleges and universities, and both public and private institutions and instrumentalities of all types and description.

(h) "Dealer" means ~~any~~ a producer, distributor, producer-distributor, jobber, or independent contractor.

(i) "Licensee" means ~~any~~ a person who holds a license from the ~~board~~ department.

~~"Association" means any organized group of dealers in a community or marketing area which has been constituted under regulations satisfactory to the board.~~

(j) "Market" means ~~any~~ an area of the state designated by the ~~board~~ department as a natural marketing area.

(k) "Consumer" means ~~any~~ a person or ~~any~~ an agency, other than a dealer, who purchases milk for consumption or use.

(l) "Producer prices" means those prices at which milk owned by a producer is sold in bulk to a distributor.

(m) "Wholesale prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a retailer.

(n) "Jobber prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a jobber or independent contractor.

(o) "Retail prices" means those prices at which milk owned by a retailer is sold, in bulk or in packages, over the counter at retail, or for consumption on the premises.

(p) "Milk" means the lacteal secretion of a dairy animal or animals, including ~~such~~ those secretions when raw and when cooled, pasteurized, standardized, or homogenized, recombined, concentrated fresh, or otherwise processed and

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all of which is designated as grade A by a duly constituted health authority, and also includes ~~such~~ those secretions which are in any manner rendered sterile or aseptic, notwithstanding whether they are regulated by any health authority of this or any other state or nation.

(q) Class I milk ~~shall include~~ includes all bottled or packaged milk, low fat, buttermilk, chocolate milk, whipping cream, commercial cream, half and half, skim milk, fortified skim milk, skim milk flavored drinks, and any other fluid milk not specifically classified in this ~~act~~ chapter, whether raw, pasteurized, homogenized, sterile or aseptic.

(r) Class II milk ~~shall include~~ includes milk used in the manufacture of ice cream and ice cream mix, ice milk, sherbet, eggnog, cultured sour cream, cottage cheese, condensed milk, and powdered skim for human consumption.

(s) Class III milk ~~shall include~~ includes milk used in the manufacture of butter, cheddar cheese, process cheese, livestock feed, powdered skim other than for human consumption, and skim milk dumped.

(2) The ~~board shall have power and authority to~~ department may assign new milk products, not expressly included in one of the classes defined in this section, ~~hereafter developed~~ to the class which in its discretion it determines to be proper."

Section 102. Section 27-405, R.C.M. 1947, is amended

to read as follows:

"27-405. General powers of the ~~milk control board~~ department. (1) The ~~board is hereby vested with the powers, and it~~ department shall ~~be its duty to~~ supervise, regulate, and control the milk industry of ~~the~~ this state ~~of Montana~~, including the production, transportation, processing, storage, distribution and sale of milk in ~~the~~ this state ~~of Montana~~ for consumption ~~within the~~ in this state. ~~providing however, that nothing contained~~ Nothing in this ~~act shall be construed to abrogate~~ chapter abrogates or ~~affect~~ affects the status, force or operation of any provision of public health laws or the law under which the ~~Montana~~ department of livestock ~~sanitary board~~ is constituted together with the ~~Montana~~ department of livestock ~~sanitary board regulations~~ rules or county board of health ~~regulations~~ rules, or municipal ordinances for the promotion or protection of the public health. ~~but the board shall have the power to~~ The department may co-operate with the ~~state board~~ department of health and environmental sciences, the ~~Montana~~ board of livestock ~~sanitary board~~ or any county or city board of health or the ~~state~~ department of agriculture ~~and industry~~ in enforcing ~~the provisions of~~ this ~~act~~ chapter.

(2) The ~~board~~ department shall ~~have the power and it shall be its duty to~~ investigate all matters pertaining to

the production, transportation, processing, storage, distribution and sale of milk in ~~the~~ this state ~~of Montana~~ and ~~to~~ conduct hearings upon any subject pertinent to the administration of this ~~act~~ chapter. The ~~board shall have the power to~~ department may subpoena milk dealers, their records, books, and accounts, and any other person from whom information may be desired or ~~deemed~~ considered necessary to carry out the purposes and intent of this ~~act~~ chapter, and may issue commissions to take depositions of witnesses who are sick or absent from the state or who cannot otherwise appear in person before the ~~milk control board~~ department at its offices. ~~in the state capitol, provided~~ The department shall give at least ten (10) ~~days~~ days' notice ~~is given~~ to the proposed witness.

~~(3) It shall be the duty of any sheriff of any county of the state, when requested to do so by the board, to execute any summons, citations or notice which the board may cause to be issued, for which such sheriff shall be authorized to charge the same fee against the funds provided for the milk control board as he might lawfully charge for the same service of such a document if issued from any district court of the state of Montana. Any person, other than a dealer who is cited for violation of the provisions of this act, or cited to show cause why his license should not be revoked, shall receive for his attendance before the~~

~~milk control board or its duly designated agent the same compensation as is provided for a witness subpoenaed to appear before the district court, which shall be charged against the funds provided for the operation of the milk control board.~~

~~(4) Any duly designated agent of the board may administer oath to witnesses, may call and give notice of price hearings when the board is not in session and may conduct hearings or investigations and any such duly designated agent of the board may sign and issue subpoenas requiring witnesses to appear before him or the board, and in addition to the manner provided above for the execution of subpoenas, summons and citations issued by the milk control board to witnesses or dealers, the board, through its designated agent shall have the power to serve said subpoenas, summons or citations upon any person by sending a copy of such subpoena, summons or citation, through the United States mail, postage prepaid, which said mail shall be registered with return receipt attached and such service shall be complete when said registered mail shall be delivered to said person and such receipt returned to the board or its designated agent, signed by the person sought to be summoned, subpoenaed, or cited. Obedience to a subpoena, summons or citation, issued by the board or any person authorized and designated by the board to issue said~~

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~~subpoena, summons or citation, may be enforced by application to any judge of the district court of the county in which such subpoena, summons or citation was issued or to any judge of the district court of the county in which such person subpoenaed, summoned or cited resides and said court shall order compliance with said subpoena, summons or citation and upon failure of the witness to attend, to testify, or to produce such books or papers or records as the board may have commanded, such witness may be punished for contempt of court as for failure to obey a subpoena issued by or to testify in a case pending before said court.~~

~~(5) The board may act as mediator or arbitrator to settle any controversy or issue pertaining to milk among or between producers, distributors, producer distributors and/or consumers.~~

~~The operation and effect of any provisions of this act, conferring a general power upon the milk control board, shall not impair or limit any specific power or powers granted to the milk control board by this act."~~

Section 103. Section 27-406, R.C.M. 1947, is amended to read as follows:

"27-406. Markets. (1) Pursuant to the declaration of policy relating to milk set forth in section 27-401, the ~~milk control board is vested with the duty and authority to~~ department shall designate natural marketing areas which

shall together embrace all the geographical area of the state and ~~to prescribe and~~ shall enforce ~~the~~ minimum producer, wholesale, and retail prices established for those ~~in such~~ areas ~~in the manner set forth in this act~~ by the board.

~~(a)~~ (2) Natural marketing areas shall be established ~~forthwith~~ throughout the state by the ~~board, provided that before any~~ department. Before a proposed natural marketing area is established the ~~board~~ department, after notice of at least thirty (30) days, shall hold a hearing or hearings, at a place or places within the proposed area, at which producers and distributors doing business within ~~said~~ the proposed natural marketing area, who are licensed by the ~~Montana livestock sanitary board~~ department of livestock, and the consuming public may present evidence and testify~~, and in the event~~. If the hearing or hearings make it evident to ~~a majority of~~ the ~~board~~ department that the establishment of ~~such~~ the proposed natural marketing area is in the public interest, the ~~board~~ department shall ~~make findings and conclusions and proceed to~~ establish ~~such~~ the natural marketing area.

~~(b)~~ (3) The ~~board shall have the power,~~ department may from time to time ~~and at its discretion, to~~ adjust ~~and~~ alter the boundaries of natural marketing areas ~~after they have been established~~, if after a hearing upon notice of at

least thirty (30) days to all interested parties it finds ~~and---orders--such~~ the adjustment to be in the public interest.

~~(c)--All-previously-established-marketing-areas-and-all price--schedules,---rules---and---regulations---issued---and promulgated--by--the-milk-control-board-in-this-state-at-the time-of-passage-of-this-act-which-are-in-force--and--effect, are--hereby--declared--to--be-and-remain-in-force-and-effect until-altered-or-rescinded-in-the-manner--provided--by--this act.~~

~~(d)--The--board--shall--at--all--times-maintain-current information-on-quantities-of-surplus-grade-A-milk--available in--the--various--marketing--areas-throughout-the-state,-and such--information--shall--be--available--to--all--interested parties-on-request.~~"

Section 104. Section 27-407, R.C.M. 1947, is amended to read as follows:

"27-407. Establishment of minimum prices. (1) The board shall fix minimum producer, wholesale, jobber, and retail prices for class I milk, and minimum producer prices only for class II and class III milk in all areas of the state, by adopting rules in a manner prescribed by the Montana Administrative Procedure Act.

(2) The board shall establish such prices by means of flexible formulas which shall be devised so that they bring

about such automatic changes in all minimum prices as are justified on the basis of changes in production costs and supply, processing and distribution costs, and retailing costs.

(3) The board shall consider the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and states, so that minimum prices which are fair and equitable to producers, distributors, jobbers, retailers, and consumers may result.

(4) The board shall, when publishing notice of proposed rule making under authority of this section, set forth the specific factors which shall be taken into consideration in establishing the formulas and in particular in determining costs of production and distribution and of the actual dollars and cents costs of production and distribution which preliminary studies and investigations of auditors or accountants in its employment indicate will or should be shown at the hearing, so that all interested parties will have opportunity to be heard and to question or rebut such considerations as a matter of record.

(5) Such specific factors may include, but shall not be limited to, the following items:

~~(i)~~--(a) Current and prospective supplies of milk in relation to current and prospective demands for such milk

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for all purposes;

~~(2)~~--(b) The ability and willingness of consumers to purchase, which shall include among other things, per capita disposable income statistics, consumer price indices, and wholesale price indices;

~~(3)~~--(c) The cost factors in producing milk, which shall include among other things the prices paid by farmers generally (as used in parity calculations of the United States Department of Agriculture), prices paid by farmers for dairy feed in particular and farm wage rates in this state;

~~(4)~~--(d) The alternative opportunities, both farm and nonfarm, open to milk producers, which shall include among other things, prices received by farmers for all products other than milk, prices received by farmers for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

~~(5)~~--(e) The prices of butter-nonfat dry milk, and cheese;

~~(6)~~--(f) The cost factors in distributing milk, which shall include among other things the prices paid by distributors for equipment of all types required to process and market milk and prevailing wage rates in this state;

~~(7)~~--(g) The cost factors in jobbing milk, which shall include among other things raw product and ingredient costs,

carton or other packaging cost, processing cost and that part of general administrative costs of the supplying distributor which may properly be allocated to the handling of milk to the point at which such milk is at the supplying distributor's dock, equipment of all types required to market milk and prevailing wage rates in the state;

~~(8)~~--(h) The need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk;

~~(9)~~--(i) A reasonable return on necessary investment to all ordinarily efficient and economical milk dealers.

(6) If the board at any time proposes to base all or any part of any official order establishing or revising any milk pricing formulas upon facts within its own knowledge, as distinguished from evidence which may be presented to it by the consuming public or the milk industry, the board shall, when publishing notice of proposed rule making under authority of this section, cause notice to be given to the consuming public and the milk industry of the specific facts within its own knowledge which it will consider, so that all interested parties will have opportunity to be heard and to question or rebut such facts as a matter of record.

(7) The board, after consideration of the evidence produced, shall make written findings and conclusions and shall fix by official rule:

(a) The formula whereby minimum producer prices for milk in classes I, II, and III shall be computed.

(b) The formula whereby minimum wholesale prices for milk in class I shall be computed.

(c) The formula whereby minimum jobber prices for milk in class I shall be computed.

(d) The formula whereby minimum retail prices for milk in class I shall be computed.

(8) This section shall not be construed as requiring the board to promulgate any specific number of formulas, but shall be construed liberally so that the board may adopt any reasonable method of expression to accomplish the objective set forth in (a), (b), (c), and (d) above. If the evidence presented to the board at any public hearing for the establishment or revision of milk pricing formulas is found by the board to require the establishment of separate and varying wholesale prices for any particular uses, the board shall designate the reasons therefor and establish such separate formulas.

(9) Each rule establishing or revising any milk pricing formulas shall classify milk by forms, classes, grades or uses as the board may deem advisable and shall specify the minimum prices therefor.

(10) The milk produced in one natural marketing area and sold in another natural marketing area shall be paid for

by a distributor or dealer in accordance with the pricing order of the area where produced at the price therein specified of the class or use in which it is ultimately used or sold.

(11) No allowance for freight, other than freight for transportation of milk from the farm to plant, shall be charged to a producer by a distributor or dealer unless it is found and ordered by the board, after notice and hearing in the manner hereinbefore specified, that such an additional freight allowance is necessary to permit the movement of milk in the public interest.

(12) All milk purchased within a natural marketing area by a distributor shall be purchased on a uniform basis. The basis to be used shall be established by the board after the producers and the distributors of the area have been consulted.

(13) The board may amend any official rule in the same manner provided herein for the original establishment of milk pricing formulas; provided, further, the board may in its discretion, when it determines the need exists, notice and hold state-wide public hearings affecting establishment or revision of milk pricing formulas in all market areas of the state.

(14) Upon petition of a distributor or a majority of producers, the board shall hold a hearing to receive and

consider evidence regarding the advisability and need for a base or quota plan as a method of payment by that distributor of producer prices; and if the board finds that the evidence adduced at such hearing warrants the establishment of a base or quota plan, the board shall proceed by official order to establish the same.

(15) Upon petition by any producer, producer-distributor or distributor in any marketing area, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for an area-wide or state-wide pooling arrangement as a method of payment of producer prices, provided that at such hearing the board shall among other things specifically receive and consider evidence concerning production and marketing practices which have historically prevailed in the area concerned or state-wide, as the case may be; and if the board finds that the evidence adduced at such hearing warrants the establishment of such an area-wide or state-wide pooling arrangement, the board shall proceed by official order to establish the same, but such official order shall be of no force or effect until it is approved in a referendum conducted by the board among affected producers, producer-distributors, and distributors.

(16) The requirements hereinabove set forth concerning notices of hearings for the establishment of milk pricing

formulas shall apply to any hearings regarding base or quota plans or area-wide or state-wide pooling arrangements, or abandonment thereof."

Section 105. Section 27-408, R.C.M. 1947, is amended to read as follows:

"27-408. Licenses to producers, producer-distributors, distributors and jobbers. In any market, where the provisions of this ~~act~~ chapter apply, it ~~shall be~~ is unlawful for ~~any~~ a producer, producer-distributor, distributor or jobber to produce, transport, process, store, handle, distribute, buy or sell milk unless ~~such~~ the dealer ~~be duly~~ is properly licensed as provided by this ~~act~~ chapter. It ~~shall be~~ is unlawful for ~~any such~~ a person to buy, sell, handle, process, or distribute milk which he knows or has reason to believe has been previously dealt with or handled in violation of any provision of this ~~act~~ chapter. The ~~board~~ department may decline to grant a license, or may suspend or revoke a license already granted, upon due cause and after hearings."

Section 106. Section 27-409, R.C.M. 1947, is amended to read as follows:

"27-409. Licenses -- disposition of income. (1) ~~No~~ A producer, producer-distributor, distributor or jobber ~~shall~~ may not engage in the business of producing or selling milk subject to this ~~act~~ chapter in this state without first

having obtained a license from the ~~Montana~~ department of livestock ~~sanitary--board~~ or, in the case of milk entering this state from another state or foreign nation, without complying with the requirements of the Montana Food, Drug and Cosmetic Act, and without being licensed under this ~~act~~ chapter by the department ~~of--business--regulation~~. The annual fee for ~~such~~ the license from the department ~~of business--regulation--shall be~~ is two dollars ($2), ~~shall be~~ and is due ~~and payable on or before the first day of~~ before July 1, and shall be deposited by ~~said~~ the department to the credit of the general fund.

(2) In addition to ~~said~~ the annual license fee, the ~~board~~ department shall, in each year, ~~on or~~ before ~~the first day of~~ April 1, for the purpose of securing funds to administer and enforce this ~~act~~ chapter, levy an assessment upon producers, producer-distributors, and distributors as follows:

(a) A fee per hundredweight on the total volume of all milk subject to this act produced and sold by a producer-distributor.

(b) A fee per hundredweight on the total volume of all milk subject to this act sold by a producer.

(c) A fee per hundredweight on the total volume of all milk subject to this act sold by a distributor, excepting that which is sold to another distributor.

(3) The department shall adopt rules fixing the amount of each fee. The amounts may not exceed levels sufficient to provide for the administration of this act. The fee assessed on a producer or on a distributor may not be more than one-half (1/2) the fee assessed on a producer-distributor.

(4) ~~Said~~ The assessment upon producer-distributors, producers, and distributors shall be paid quarterly ~~on or~~ before ~~the fifteenth (15th) day of July,~~ January 15, April 15, July 15, and October 15, ~~January and April~~ of each year~~,~~. ~~and the~~ The amount of ~~such~~ the assessment shall be computed by applying the fee designated by the ~~board~~ department to the volume of milk sold in the preceding calendar quarter ~~immediately preceding~~.

(5) Failure of ~~any~~ a producer, producer-distributor, or distributor to pay ~~said~~ an assessment when due ~~shall constitute~~ is a violation of this ~~act~~ chapter and his license under this ~~act~~ chapter ~~shall thereupon~~ automatically ~~terminate~~ terminates and ~~be null~~ is ~~and~~ void ~~and of no effect~~. ~~Reinstatement of a~~ A license so terminated shall be ~~effected~~ reinstated by the department upon payment of a delinquency fee equal to thirty per cent (30%) of the assessment which was due.

(6) All assessments ~~hereinbefore~~ required ~~to be paid~~ by this chapter shall be deposited by the department ~~of~~

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~~business-regulation~~ in the earmarked revenue fund~~;~~. ~~and--all~~ All costs of administering this ~~act~~ chapter, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of this ~~act~~ chapter, shall be paid out of control board moneys in ~~such~~ that fund.

(7) The department may, if it finds the costs of administering and enforcing this ~~act~~ chapter can be derived from lower rates, amend its rules to fix the rates at a less amount on or before the first day of April in any year."

Section 107. Section 27-410, R.C.M. 1947, is amended to read as follows:

"27-410. Application for licenses. An applicant for license to operate as a producer, producer-distributor, distributor, or jobber shall file a signed application upon a blank prepared under authority of the ~~board~~ department, and an applicant shall state ~~such~~ facts concerning his circumstances and the nature of the business to be conducted ~~as~~ which in the opinion of the ~~board~~ department are necessary for the administration of this ~~act~~ chapter. ~~Such~~ The application shall certify the applicant to be the holder of all licenses required by the ~~Montana~~ department of livestock ~~sanitary board~~ for the conduct of his business or, in the case of milk entering this state from another state or foreign nation, compliance with the requirements of the

Montana Food, Drug and Cosmetic Act~~;~~. ~~and--such~~ The application shall be accompanied by the license fee required to be paid."

Section 108. Section 27-411, R.C.M. 1947, is amended to read as follows:

"27-411. Declining, suspending and revoking licenses -- penalties in lieu of suspension or revocation. (1) The ~~board~~ department may ~~decline~~ refuse to grant a license or may suspend or revoke a license already granted for due cause upon due notice and after hearing. The violation of any provisions of this ~~act~~ chapter or of any lawful order or ~~regulation~~ rule of the board or department, the failure or refusal to make required statements or reports, ~~and aggravated--delinquency--in-the-payment-of~~ or failure to pay license or assessment fees~~,--or-any-of-them,-shall-be--deemed~~ are causes for which the ~~board~~ department may, at its discretion, suspend, or revoke a license~~;. provided-that-no license-shall-be-fully-revoked-except-upon-the-approval-of-a majority-of-all-members-of-the-board;~~

(2) In ~~lieu~~ place of a suspension or revocation of a license the ~~board~~ department may assess a civil penalty not to exceed five hundred dollars ($500) per day for each daily failure to comply with or each daily violation of the provisions of this ~~act~~ chapter or of any lawful order or ~~regulation~~ rule of the ~~board;~~ department. ~~and--if~~ If the

person against whom ~~such~~ a civil penalty is assessed fails ~~or--refuses~~ to pay ~~such~~ the civil penalty ~~forthwith~~ immediately, the ~~board--is--empowered--and--directed--to~~ department shall collect ~~such~~ the civil penalty by a civil proceeding in the district court of the first judicial district. ~~Such--civil--penalties~~ This penalty shall be construed as civil and not criminal in nature. Any moneys received by the ~~board~~ department as a result of collection of civil penalties shall be paid into the ~~state-general-fund~~ earmarked revenue fund as provided by section 27-417, R.C.M. 1947."

Section 109. Section 27-413, R.C.M. 1947, is amended to read as follows:

"27-413. Rules and orders. The ~~board~~ department may adopt and enforce ~~all~~ rules and ~~all~~ orders necessary to carry out the provisions of this ~~act~~ chapter and any orders adopted under it by the department or the board. ~~Every~~ A rule or order shall be posted for public inspection in the main office of the ~~board~~ department for thirty (30) days, and a copy shall be filed in the office of the ~~board,--also--a~~ department. A copy shall also be sent by registered letter to the secretary of each area, ~~excepting~~ except in the case of an order, directed only to a person or persons named ~~therein~~ in it, which shall be served by personal delivery of a copy, or by mailing a copy, ~~in-the-United-States-mails,~~

~~with-postage-prepaid-and-properly-addressed~~ to each person to whom ~~such~~ the order is directed, or, in the case of a corporation, to any officer or agent of the corporation upon whom a summons may be served in accordance with ~~the provisions--of--the--statutes-of-Montana~~ laws of this state. ~~Such~~ The posting, in the main office of the ~~board~~ department, of ~~any~~ a rule ~~and-of-any~~ or order, not required to be personally served as ~~above~~ provided in this section, and ~~such~~ the filing in the office of the ~~board-shall-constitute-due-and~~ department is sufficient notice to all persons affected by ~~such--a~~ the rule or order. A rule or order when ~~duly~~ properly posted and filed or served, as provided in this ~~act, shall-have~~ section, has the force ~~and effect~~ of law."

Section 110. Section 27-414, R.C.M. 1947, is amended to read as follows:

"27-414. Rules of fair trade practices. ~~In-addition-to the--general--and--special--powers-heretofore-set-forth,-the board-shall-have-the-power-to~~ The department may ~~make--and formulate~~ adopt reasonable rules ~~and-regulations~~ governing fair trade practices as they pertain to the transaction of business among licensees under this ~~act~~ chapter and among licensees and the general public. ~~Such--reasonable~~ Those rules ~~and--regulations-governing-fair-trade-practices~~ shall contain, but ~~shall~~ are not ~~be~~ limited to, provisions

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~~regarding~~ prohibiting the following methods of doing business which are ~~hereby declared~~ unfair, unlawful, and not in the public interest:

~~(a)~~--(1) The payment, allowance, or acceptance of secret rebates, secret refunds, or unearned discounts by ~~any~~ a person, whether in the form of money or otherwise.

~~(b)~~--(2) The giving of ~~any~~ milk, cream, dairy products, services, or articles of any kind, except to bona fide charities, for the purpose of securing or retaining the fluid milk or fluid cream business of ~~any~~ a customer.

~~(c)~~--(3) The extension to certain customers of special prices or services not available to all customers who purchase milk of like quantity under like terms and conditions.

~~(d)~~--(4) The purchasing, processing, bottling, packaging, transporting, delivering or otherwise handling in any marketing area of ~~any~~ milk which is to be or is sold or otherwise disposed of at less than the minimum wholesale and minimum retail prices established by the board ~~pursuant to this act~~.

~~(e)~~ (5) The payment of a ~~less~~ price lower than the applicable producer price, established by the board, ~~pursuant to this act~~ by a distributor to ~~any~~ a producer for milk which is distributed to any person, including agencies of the federal, state or local government."

Section 111. Section 27-414.1, R.C.M. 1947, is amended to read as follows:

"27-414.1. Limitation on extension of credit to retailers. ~~No~~ A sale or delivery ~~shall~~ may not be made by ~~any~~ a producer-distributor, distributor, or jobber to ~~any~~ a retailer, except for cash or payment within fifteen (15) days after regular billings, and all producer-distributors, distributors, and jobbers shall bill retailers at least monthly. ~~In no event shall any~~ A producer-distributor, distributor, or jobber may not extend more than fifteen (15) days' credit after billing to a retailer. ~~nor shall any~~ A retailer ~~accept or~~ may not receive delivery of ~~such~~ milk without agreement to pay for it in cash ~~therefor~~ within fifteen (15) days after regular billing ~~therefor~~. A correctly dated check which is honored upon presentment ~~shall be considered as~~ is cash within the meaning of this ~~act~~ section. ~~Any~~ An extension or acceptance of credit in violation ~~hereof~~ of this section shall be ~~regarded and~~ construed as rendering or receiving financial assistance. ~~and the~~ The licenses of producer-distributors, distributors, or jobbers involved in violation ~~hereof~~ of this section shall be suspended or revoked as determined by the ~~board~~ department in its discretion."

Section 112. Section 27-414.2, R.C.M. 1947, is amended to read as follows:

"27-414.2. Financing prohibitions -- producer and retailer. (1) ~~No~~ A producer, producer-distributor, distributor, or jobber licensed under this ~~act---shall hereafter~~ chapter may not advance or loan money or credit to, or furnish money or credit for, or refinance or cosign or guarantee promissory notes, security agreements, conditional sales contracts, or other commercial paper for or on behalf of ~~any~~ a retailer~~;~~. ~~and--no~~ A producer, producer-distributor, distributor, or jobber ~~shall~~ may not be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer~~;~~. ~~and--no~~ A producer-distributor, distributor, or jobber licensed under this ~~act~~ chapter ~~shall-hereafter~~ may not advance or loan money or credit to, or furnish money or credit for, or refinance or cosign or guarantee promissory notes, security agreements, conditional sales contracts or other commercial paper for or on behalf of ~~any~~ a producer~~;~~. ~~and-no~~ A producer-distributor, distributor, or jobber ~~shall~~ may not be financially interested, either directly or indirectly, in the conduct or operation of the business of a producer~~;~~. ~~provided;-however-this~~ This section ~~shall~~ does not ~~be--construed--so--as--to~~ prohibit ~~any~~ a producer from belonging to, participating in, or patronizing a co-operative corporation or a producer, producer-distributor, distributor, or jobber from operating

his own wholly-owned dairy products or other retail store or home-delivery retail routes.

(2) This section ~~is~~ does not ~~to--be--construed-to~~ prohibit a producer from requesting and a distributor from granting an advance payment for milk ~~prior-to~~ before the regular date of payment ~~therefor~~ for milk or ~~to~~ limit in any way the right of a producer to assign part or all of moneys which are or may become due to him from a distributor."

Section 113. Section 27-415, R.C.M. 1947, is amended to read as follows:

"27-415. Entry, inspection and investigation. The ~~board;--or--any--person--designated--for-that-purpose-by-the board;-shall-have-access-to;-and~~ department may enter, at all reasonable hours, all places where milk is produced, processed, bottled, handled or stored, or where the books, papers, records, or documents relative to ~~such~~ those transactions are kept and ~~shall--have--the--power--to~~ may, inspect and copy ~~the-same~~ them in any place ~~within-the~~ in this state~~;~~. ~~and~~ The department may administer ~~oath~~ oaths, and take testimony for the purpose of ascertaining facts~~;~~ which, in the judgment of the ~~board~~ department, are necessary to administer this ~~act~~ chapter."

Section 114. Section 27-416, R.C.M. 1947, is amended to read as follows:

"27-416. Reports of dealers -- accounting system --

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records. (1) The ~~board shall have the power to~~ department may require ~~all persons holding licenses under it~~ licensees to file with ~~the board such~~ it reports at ~~such~~ reasonable or regular ~~time as~~ times which the ~~board~~ department may require, showing ~~such person's~~ the licensee's production, sale, or distribution of milk, and any information ~~deemed~~ considered by the ~~board~~ department necessary which pertains to the production, sale, or distribution of ~~such~~ milk, either under oath or otherwise, as the ~~board~~ department may direct~~, and failure~~ Failure or refusal to file ~~such reports~~ a report when directed to do so ~~by the board or its duly designated agent shall constitute~~ is grounds for the revocation of ~~such person's~~ the license and ~~shall constitute~~ is a violation for which ~~such person~~ the licensee may be fined as ~~hereinafter~~ provided by this chapter, one or both, at the discretion of the ~~board~~ department.

(2) The ~~board~~ department shall adopt a uniform system of accounting to be used by the distributor to account for the usage of all milk received by the distributor.

(3) ~~Every~~ A distributor and producer-distributor shall keep ~~the following records~~:

(a) A record of all milk, cream, or dairy products received, detailed as to location, names and addresses of suppliers, prices paid, and deductions or charges made, and the use to which ~~such~~ the milk or cream was put~~;~~

(b) A record of the quantity of each kind of milk or dairy product manufactured and the quantity and price of milk or dairy products sold~~;~~

(c) A ~~full and~~ complete record of all milk, cream, or dairy products sold, classified as to kind and grade, showing where sold, and the amount received ~~therefor~~ in payment~~;~~

(d) A record of the wastage or loss of milk or dairy products~~;~~

(e) A record of the items of handling expense~~;~~

(f) A record of all refrigeration facilities ~~rented or~~ sold for storage purposes to any person, showing types, ~~and~~ sizes, ~~of the same, the~~ and location of ~~said~~ the facilities, and the original, or duplicate original, of all agreements covering ~~rental charges~~ sales ~~therefor~~ for them~~;~~

~~(g) A record of all conditional sales of equipment or other property, the location of said property, and the original, or duplicate original, of all conditional sales contracts pertaining thereto;~~

~~(h) A record of all moneys loaned to wholesale customers, the terms and conditions of said loans, and the original evidence of the indebtedness based on said loans;~~

~~(i)~~ (g) ~~Such other~~ Other records ~~as~~ which the ~~board may deem~~ department considers necessary for the proper enforcement of ~~the act~~ this chapter."

Section 115. Section 27-417, R.C.M. 1947, is amended to read as follows:

"27-417. Disposition of fines. (1) All fines assessed ~~in any~~ by a court for violation of ~~the provisions of~~ this ~~act~~ chapter shall be paid ~~over~~ by the court to the ~~milk control board or its properly designated agent~~ department.

(2) All fines received by the ~~board~~ department shall be deposited with the state treasurer and shall be placed by him in the earmarked revenue fund. ~~All such fines~~ Fines assessed for violations of this ~~act~~ chapter are ~~hereby~~ earmarked for the purposes of this ~~act~~ chapter."

Section 116. Section 27-421, R.C.M. 1947, is amended to read as follows:

"27-421. Co-operation with other governmental agencies. In order to secure a uniform system of milk control, the ~~board is hereby vested with power, and it~~ department shall ~~be its duty to~~ confer and co-operate with the ~~legally constituted~~ proper authorities of other states and of the United States, including the secretary of agriculture of the United States, and, for ~~the foregoing~~ those purposes, the ~~board shall have the power to~~ department may conduct joint hearings, issue joint or concurrent orders and exercise all its powers under this ~~act~~ chapter."

Section 117. Section 27-422, R.C.M. 1947, is amended to read as follows:

"27-422. Violations made misdemeanors -- penalties. ~~(a) Any person required by this act to be licensed who shall produce, sell, distribute, or handle milk in any way except as a consumer, without first having obtained a license as required of him by this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding six hundred dollars ($600.00). Each day's violation of this provision shall constitute a separate offense. A violation of any provision of this act or of any lawful rule or order of the board, including a failure to answer subpoena or to testify before the board, shall be deemed a misdemeanor punishable by a fine not exceeding six hundred dollars ($600.00), and each day during which such violation shall continue shall be deemed a separate violation.~~

(1) A person who produces, sells, distributes, or handles milk in any way, except as a consumer, without a license from the department as required by this chapter, or who violates a lawful rule of the department or board, is guilty of a misdemeanor punishable by a fine not exceeding six hundred dollars ($600). Each day's violation is a separate offense.

~~(b)~~ (2) The district courts ~~shall~~ have original jurisdiction in all criminal actions for violations of ~~the provisions of~~ this ~~act~~ chapter, and in all civil actions for

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the recovery or enforcement of ~~fines~~ penalties, provided for in this ~~act, and all such~~ chapter. All of those actions, both criminal and civil, shall be ~~instituted, prosecuted and~~ tried in the district court.

~~(c)~~--(3) ~~It shall be the duty of the~~ The county attorneys ~~and deputy county attorneys~~, in their respective counties, shall diligently ~~to attend all inquisitions held under the provisions of this act and diligently to~~ prosecute all violations of ~~the laws of the state relating to the provisions of~~ this ~~act~~ chapter."

Section 118. Section 27-423, R.C.M. 1947, is amended to read as follows:

"27-423. Constructions, exceptions and limitations. (1) The license required by this ~~act~~ chapter ~~shall be~~ is in addition to any other license required by ~~any statute of Montana~~ state law or any municipality of ~~the~~ this state ~~of Montana~~. This act shall apply to every part of the state of Montana.

If any portion of this ~~act~~ chapter is held invalid or unconstitutional, ~~such~~ the holding ~~shall~~ does not affect the validity of the ~~act~~ chapter as a whole, or any part ~~thereof~~ of it which can be given effect without the part so held to be unconstitutional or invalid.

(2) ~~No provision of this act shall~~ This chapter does not apply ~~or be construed to apply~~ to foreign or interstate

commerce except in so far as ~~the same~~ it may be effective in compliance with the United States constitution, and with the laws of the United States. It is the intention of the legislature, however, that the instant, whenever that may be, that the handling, within the state by a dealer, of milk produced outside of the state, becomes the subject of regulation by the state in the exercise of its police powers, the provisions of this ~~act~~ chapter, affecting intrastate milk, ~~shall~~ immediately apply and the powers conferred by this ~~act shall~~ chapter attach thereto."

Section 119 Section 27-424, R.C.M. 1947, is amended to read as follows:

"27-424. Additional remedies. The ~~board or its authorized agent~~ department may ~~institute such action~~ begin any proceeding at law or in equity as may appear necessary to enforce compliance with ~~any provision of~~ this ~~act~~ chapter or to enforce compliance with ~~any~~ an order, or rule ~~or regulation~~, of the board ~~pursuant to the provisions of~~ or department adopted under this ~~act~~ chapter or to obtain a judicial interpretation of any of ~~the foregoing, and in~~ them. In addition to any other remedy, the ~~board, after unanimous consent of all members of the board,~~ department may apply to the district court of the district ~~wherein~~ where the action arises, for relief by injunction, mandamus, or any other appropriate remedy in equity without being

compelled to allege or prove that an adequate remedy at law does not otherwise exist~~.~~ ~~nor--shall--the--board~~ The department may not be required to ~~give--or~~ post bond in ~~any~~ an action to which it is a party whether upon appeal or otherwise. All legal actions may be brought by or against the board or department in the name of the ~~Montana--milk control--board~~ department of business regulation and it ~~shall~~ is not be necessary in ~~any~~ an action to which the ~~board~~ department is a party that ~~such~~ the action be brought by or against ~~the~~ this state ~~of--Montana~~ on relation of the ~~Montana milk--control--board~~ department. The ~~board--shall--have--the power--to--institute--action~~ department may sue by its own attorney ~~or--counselor,--but~~ and it ~~shall--have--the--right,--if it--deems--advisable,--to~~ may also call upon ~~any~~ a county attorney to represent it in the district court~~,~~ of ~~the~~ his county ~~in--which--the--action--is--taken~~, or the attorney general to represent it on appeal to the supreme court ~~of--Montana~~, or it may associate its own ~~counselor~~ attorney with either in any court."

Section 120. Section 27-426, R.C.M. 1947, is amended to read as follows:

"27-426. Bonds required of distributors -- amounts -- forms and conditions. (1) ~~Every~~ A distributor before purchasing ~~any~~ milk from a producer shall ~~execute--and~~ deliver to the ~~milk--control--board~~ department a surety bond

~~in--the--minimum--sum~~ of not less than one thousand dollars ($1,000), executed by the ~~applicant~~ distributor as principal and by a surety company ~~qualified--and~~ authorized to do business in this state as surety. ~~Said~~ The bond shall be ~~upon~~ on a form approved by the ~~board~~ department and shall be conditioned upon the payment, in the manner required by this ~~act~~ chapter, of all amounts due to producers for milk purchased by ~~such--licensee--or--applicant~~ the distributor during the license year. ~~Said~~ The bond shall be to the state in favor of every producer of milk. In case of failure by a distributor to pay ~~any~~ a producer ~~or--producers~~ for milk in the manner required by this ~~act~~ chapter, the ~~board~~ department shall proceed ~~forthwith~~ immediately to ascertain the names and addresses of all producer-creditors of ~~such~~ that distributor, together with the amounts due ~~and owing--to~~ them ~~and--each--of--them--by--such--distributor,~~ and shall request all ~~such~~ those producer-creditors to file a verified statement of their respective claims ~~with--the board.~~ ~~Thereupon--the--board~~ The department shall ~~bring--an action~~ then sue on the bond on behalf of ~~said~~ the producer-creditors. Upon ~~any--action--being--commenced--upon said~~ suing on the bond, the ~~board~~ department may require the filing of a new bond; and immediately upon a recovery in ~~any~~ an action upon ~~such~~ the bond, ~~such~~ the distributor shall file a new bond~~.~~ ~~and--upon~~ Upon failure to file ~~same~~ a new

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bond within ten (10) days in either case, ~~such~~ the failure ~~shall constitute~~ is grounds for the revocation or suspension of the license of ~~such~~ the distributor. ~~In the event that~~ If recovery ~~upon~~ on the bond is not sufficient to pay all of the claims as finally determined ~~and adjudged~~ by the court, ~~any such~~ the amount recovered shall be divided pro rata among ~~said~~ the producer-creditors.

(2) The minimum bond of one thousand dollars ($1,000) shall be required of distributors purchasing an average daily quantity of milk of less than one hundred (100) gallons; distributors purchasing an average daily quantity of one hundred (100) gallons and less than two hundred (200) gallons during any calendar month during a license year shall post a bond in the amount of two thousand dollars ($2,000); distributors purchasing an average daily quantity of two hundred (200) gallons and less than three hundred (300) gallons during any calendar month during a license year shall post a bond in the amount of three thousand dollars ($3,000); distributors purchasing an average daily quantity of three hundred (300) gallons or more during any calendar month during a license year shall post a bond in the sum of five thousand dollars ($5,000).

(3) ~~In the event that any~~ If a distributor ~~so~~ increases his purchases of milk during the license year ~~that said purchases~~ to exceed the amount for which ~~said~~

~~distributor~~ he is bonded, ~~said distributor~~ he shall ~~forthwith~~ immediately post ~~such~~ the additional bond ~~or bonds as may be~~ required to comply with ~~the provisions of~~ this section.

(4) The ~~board is authorized to~~ department may require ~~any~~ a distributor to furnish a bond ~~or bonds~~ in addition to those specified ~~above~~ in this section, if, after notice and hearing and upon good cause shown, it determines ~~such~~ the additional bond ~~or bonds are~~ is required to assure payment of all amounts due or to become due to producers.

(5) Failure of ~~any~~ a distributor who purchases milk from producers to ~~execute and deliver the~~ post a bond ~~as herein provided and~~ required ~~shall constitute~~ by this section is a violation of this ~~act; failure of any such distributor to post such additional bond or bonds as may be required to comply with the provisions of this act shall likewise constitute a violation of this act~~ chapter."

Section 121. Section 35-145, R.C.M. 1947, is amended to read as follows:

"35-145. Home owners' loan corporation bonds as security for deposit of public funds. Subject to ~~such~~ rules ~~and regulations as may be~~ prescribed by the ~~superintendent of banks~~ department of intergovernmental relations, the bonds and other obligations herein made eligible for investment, may be used as security for all deposits of

public funds or obligations for which depository bonds or any kind of bonds or other securities are required, or may by law be deposited as security."

Section 122. Section 47-202, R.C.M. 1947, is amended to read as follows:

"47-202. Definitions. Unless ~~otherwise---clearly indicated-by~~ the context requires otherwise, ~~the--following words--when--used~~ in this act, ~~for-the-purposes-of-this-act, shall-have-the-meanings-respectively--ascribed--to--them--in this-section~~:

~~(a)~~--(1) "Person" ~~shall---mean~~ means individuals, partnerships, associations, corporations, and ~~any--and~~ all legal entities in the loaning business.

~~(b)~~--(2) "License" ~~shall-mean~~ means one or both of the licenses provided for by this act.

~~(c)~~--(3) "Licensee" ~~shall---mean~~ means the person holding ~~any-such~~ a license.

~~(d)--(4) "Commissioner"-shall-mean-the--consumer--loan commissioner.~~ "Department" means the department of business regulation provided for in Title 82A, chapter 4.

~~(e)~~--(5) "Consumer type loan business" ~~shall--mean~~ means the business of making loans of two thousand five hundred dollars ($2,500) or less generally repayable in substantially equal installments."

Section 123. Section 47-203, R.C.M. 1947, is amended

to read as follows:

"47-203. ~~Office---of---consumer---loan---commissioner, employees,---appointment,---compensation--------commissioner~~ Department -- powers and duties -- adoption of rules. ~~and regulations--by--commissioners.--(a)-There-is-hereby-created the-office-of-consumer-loan-commissioner,-who-shall--be--the bank--examiner--of--the--state--of--Montana.---He--is-hereby authorized-to-appoint,--employ,--remove--and--prescribe--the duties--and--fix--the--compensation-of-such-employees-as-are necessary-to-properly-discharge-the-duties--of--his--office.~~ ~~(b)~~--(1) All powers and duties of regulation and supervision conferred by this act are vested in the ~~commissioner~~ department. The ~~commissioner~~ department shall adopt ~~and-promulgate-such~~ rules ~~and-regulations-as-shall--be~~ necessary to carry out the intent and purposes of this act. ~~All-rules-and-regulations-of-general--application--shall--be filed--in--the--commissioner's--office--and--be--open-to-the public.~~ A copy of every ~~such~~ rule ~~or--regulation~~ shall be mailed to each licensee, ~~postage-prepaid,~~ at least fifteen (15) days in advance of its effective date. ~~provided, however~~ However, the failure of a licensee to receive a copy of ~~such--rules--or-regulations-shall~~ a rule does not exempt him from ~~the-duty-of-compliance~~ complying with ~~such--rules and---regulations~~ a rule ~~lawfully--promulgated--hereunder~~ adopted under this act.

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~~(c)~~--(2) All ~~valid~~ rules ~~and regulations~~ adopted under ~~the provisions of~~ this act ~~shall be~~ are binding ~~upon~~ on all licensees and enforceable by the ~~commissioner~~ department through the power of suspension or revocation of licenses."

Section 124. Section 47-206, R.C.M. 1947, is amended to read as follows:

"47-206. License, when required -- display -- nontransferable -- removal -- license year, fees -- ~~consumer loan administration fund~~ -- use. ~~(a)~~ (1) ~~On and after July 1, 1959, each~~ A place of business operated under this act shall ~~have and~~ properly ~~displayed therein,~~ display on the premises a nontransferable and nonassignable license. The same person may obtain additional licenses upon compliance with this act as to each license. Application for a license shall be on a form prescribed and furnished by the ~~commissioner~~ department. A licensee may move his place of business from one place to another within a county without obtaining a new license, provided he obtains written permission from the ~~commissioner~~ department.

~~(b)~~--(2) ~~Submitted with~~ With each application the applicant shall submit be fifty dollars ($50) as an investigation fee and one hundred twenty-five dollars ($125) as a license fee~~,~~. ~~which~~ The license fee shall be returned to the applicant if the application is denied. The license year ~~shall be~~ is the calendar year and the license fee for

any period less than six (6) months ~~shall be~~ is sixty-two dollars fifty cents ($62.50). ~~Each~~ A license ~~shall remain~~ remains in force until surrendered, suspended, or revoked.

~~(c)~~--(3) All moneys collected under the authority of this act shall be paid into the state treasury by the ~~commissioner~~ department."

Section 125. Section 47-207, R.C.M. 1947, is amended to read as follows:

"47-207. Issuance or denial of license, when -- mailing of denial order and findings. ~~(a)~~ (1) Within thirty (30) days after an application for license is filed with the ~~commissioner~~ department, together with the required fees, the ~~commissioner~~ department shall issue the license if the character and general fitness of the applicant is such as to warrant belief that the business will be operated lawfully and fairly within the provisions of this act, or enter an order denying ~~same~~ the license, if ~~he shall find~~ it finds to the contrary~~:~~. ~~Provided, however, that any person engaged in the consumer type loan business on December 31, 1958 shall receive a license upon filing the required application and fees within thirty (30) days after the effective date of this act:~~

~~(b)~~--(2) A copy of the order granting or denying a license, together with a summary of the department's findings ~~thereon~~, shall be filed in the office of the

~~commissioner~~ department and shall be public record. A copy of the order denying a license, together with a summary of the department's findings ~~thereon~~, shall be mailed postage prepaid, to the applicant at the address stated in the application."

Section 126. Section 47-215, R.C.M. 1947, is amended to read as follows:

"47-215. Investigations, when -- who may be investigated. The ~~commissioner--or--his--duly---authorized representatives~~ department may at any time investigate any transaction with borrowers and may examine the books, accounts, and records in this state to discover violations of this act by (1) ~~any~~ a licensee, (2) ~~any~~ a person who advertises for, solicits, or holds himself out as willing to make loans in amounts of two thousand five hundred dollars ($2,500) or less, or (3) ~~any~~ a person whom the ~~commissioner~~ department has reason to believe is violating or is about to violate ~~the provisions of~~ this act."

Section 127. Section 47-218, R.C.M. 1947, is amended to read as follows:

"47-218. Annual report -- contents -- verified -- publication. ~~Each~~ A licensee shall annually ~~on or~~ before ~~the 15th day of~~ April 15, file ~~an annual~~ a report for the preceding calendar year with the ~~commissioner~~ department. ~~Such~~ The report shall give information with respect to the

financial condition of ~~such~~ the licensee and shall include: The name and address of the licensee; balance sheets at the beginning and end of the calendar year; a statement of income and expenses; a reconciliation of surplus or net earnings with the balance sheets; a schedule of assets used in the consumer loan business; an analysis of charges, size of loans made and types of security on loans; an analysis of suits and foreclosures; and ~~such~~ other relevant information ~~as~~ the ~~commissioner~~ department may reasonably require concerning the business ~~and operations~~ during the preceding calendar year of each licensed place of business conducted by ~~such~~ the licensee ~~within the~~ in this state. ~~Such~~ The report shall be made under oath and be in a form prescribed by the ~~commissioner, who~~ department, which shall ~~make and~~ publish annually an analysis and ~~recapitulation~~ summary of ~~such~~ the reports."

Section 128. Section 47-223, R.C.M. 1947, is amended to read as follows:

"47-223. Revocation and suspension of license, when. The ~~commissioner~~ department, upon ten (10) days' written notice to the licensee and statement of the grounds ~~therefor~~ and upon reasonable opportunity to be heard at a public hearing, if requested by the licensee, may suspend, but not for more than thirty (30) days, or revoke ~~any~~ a license ~~issued hereunder~~ if ~~he~~ it finds the licensee has knowingly

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violated any provision of this act. ~~Whenever~~ When the ~~commissioner shall enter~~ department enters an order revoking or suspending a license, ~~he~~ it shall mail a copy of ~~his~~ the order by registered mail to the licensee at the address for which the license was issued."

Section 129. Section 50-604, R.C.M. 1947, is amended to read as follows:

"50-604. Copies of bills and invoices to be kept for inspection. ~~Any~~ A person, firm, or corporation, mining, shipping, or producing coal, and all persons, firms or corporations wholesaling, jobbing, exchanging, offering for sale or selling at retail any coal ~~within the~~ in this state ~~of Montana~~, shall keep ~~within the state of Montana~~, a true, accurate, and complete copy of all the original statements, bills, and invoices of all coal produced, shipped, marketed, exchanged, or sold for at least one (1) year~~.~~ ~~and all~~ All papers, records and files of any person, firm, or corporation transporting, producing, shipping, exchanging, or selling any coal ~~within the~~ in this state ~~of Montana~~ shall, at all times, be open to inspection by the attorney general, the county attorneys, and the ~~state sealer of weights and measures~~ department of business regulation for the purposes of enforcing this act."

Section 130. Section 50-606, R.C.M. 1947, is amended to read as follows:

"50-606. Enforcement of ~~act~~ chapter. ~~It shall be the duty of the state sealer of weights and measures to~~ The department of business regulation shall enforce ~~the provisions of~~ this act and ~~the duty of~~ the attorney general and the county attorneys ~~of the counties of the state to~~ shall prosecute all cases arising under ~~the~~ its provisions ~~hereof~~."

Section 131. There is a new section to be numbered 51-101.1, R.C.M. 1947, which reads as follows:

51-101.1. Definitions. Unless the context requires otherwise, in this act, "department" means the department of business regulation provided for in section 82A-401.

Section 132. Section 51-106, R.C.M. 1947, is amended to read as follows:

"51-106. Fair price for agricultural products, how determined. (1) The following method shall be used in determining fair prices for agricultural products sold on local markets, in ~~any~~ a trade area, district or city in which the major portion of ~~any~~ an agricultural commodity or product is produced within or adjacent to ~~said~~ the trade area, city or district~~:~~:

(a) ~~Whenever 75%~~ When seventy-five percent (75%) of producers of ~~any~~ an agricultural product or commodity marketing ~~said~~ those products or commodities within ~~any~~ a trade area, district or city ~~shall~~ determine what is a fair

price based upon competitive and other factors for their product or commodity, it shall be ~~deemed~~ considered the fair price for ~~such~~ that product or commodity under the terms of this act.

(b) ~~Such~~ Those producers through their ~~regular constituted~~ agents shall file with the ~~Montana---trade commission--such~~ department the fair price and request a hearing for the establishment of fair prices to jobbers, wholesalers, retailers, and consumers of ~~said~~ the agricultural products or commodities. Any organization representing consumers ~~shall~~ may not be denied representation at ~~such a~~ the meeting.

(2) After the establishment of ~~such~~ a schedule of fair prices for ~~said~~ the agricultural products or commodities, it ~~shall be~~ is a violation of this act for ~~any~~ a producer, jobber, wholesaler or retailer to sell or buy ~~any~~ an agricultural commodity or product below ~~such~~ the price ~~as~~ established by the ~~Montana--trade--commission--and--such~~ department. That action ~~shall be deemed a violation of this act and~~ is punishable under the terms provided in this act."

Section 133. Section 51-113, R.C.M. 1947, is amended to read as follows:

"51-113. ~~Montana---trade---commission~~ Department -- administration of act by -- intervention -- orders -- review -- appeals -- process -- finality of order. ~~(1) The--Montana trade--commission shall have the administration of this act, and the members thereof shall--not--receive--any--additional compensation--for--their--services other than their salaries prescribed by law.--The commission shall meet not less--than six (6) times a year on or about the fifteenth (15th) day of the--month,--and--as--often and wherever it may decide other meetings are necessary.--Suitable--notice--of--all--meetings shall be given as the commission may determine.~~

~~Said--commission--is--empowered and directed to prevent any person, firm or corporation from violating--any--of--the provisions of this chapter.~~

(1) The department shall prevent a person, firm, or corporation from violating any of the provisions of this chapter.

(2) Upon receiving notice ~~from any person~~ that ~~any~~ a person, firm or corporation is violating or has violated any of the provisions of this chapter, the ~~commission~~ department shall immediately notify the person giving ~~such~~ that notice either to appear ~~at--its--next regular or special meeting~~ before the director of the department or to make a written reply to show probable cause of ~~such~~ that violation. If probable cause is shown, the ~~commission~~ department must ~~thereafter~~ then make its own investigation and within sixty (60) days of the finding of probable cause must make a written report of its investigation and must mail a copy of

its findings to the person initially giving notice of a violation.

(3) If, after ~~such~~ an investigation the ~~commission shall have~~ department has reason to believe that ~~any--such~~ the person, firm, or corporation has been or is engaging in any course of conduct or doing any act ~~or acts~~ in violation of ~~the--provisions--of~~ this chapter and if it ~~shall appear~~ appears to the ~~commission~~ department that a proceeding by it ~~in respect thereof~~ would be to the interest of the public, it shall issue and serve upon ~~such~~ the person, firm or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed not less than five (5) days after the service of ~~said~~ the complaint. ~~Any such~~ A complaint may be amended by the ~~commission~~ department in its discretion at any time five (5) days prior to the issuance of an order based ~~thereon~~ on it. The person, firm or corporation so complained of ~~shall have the right to~~ may appear at the place and time so fixed and show cause why an order should not be entered by the ~~commission~~ department requiring ~~such~~ that person, firm, or corporation to ~~cease and desist from~~ stop the violation of the law ~~so~~ charged in ~~said~~ the complaint. Any person, firm or corporation may make application, and upon good cause shown may be allowed by the ~~commission~~ department to intervene and appear in ~~said~~ the

proceeding by counsel or in person. The testimony in ~~any such~~ the proceeding shall be reduced to writing and filed in the office of the ~~commission~~ department. If upon ~~such~~ the hearing the ~~commission shall be of the opinion~~ department believes that the act or conduct in question is prohibited by this chapter, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on ~~such~~ that person, firm, or corporation an order requiring ~~such~~ that person, firm, or corporation to ~~cease and desist from such~~ stop the acts or conduct. Until a transcript of the record in ~~such~~ the hearing ~~shall have~~ has been filed in a district court, as hereinafter provided, the ~~commission~~ department may at any time, upon ~~such~~ the notice and in ~~such~~ the manner as it ~~shall deem~~ considers proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

~~(3)~~--(4) ~~Any person, firm or corporation required by an order of the commission to cease and desist from any such act or conduct may obtain a review of such order in any district court of the state of Montana within any district where the act or conduct in question was done or carried on, or where such person, firm or corporation resides or carries on business, by filing in the court, within sixty days from the date of the service of such order a written petition~~

~~praying--that--the--order-of-the-commission-be-set-aside,--A copy-of-such-petition-shall-be--forthwith--served--upon--the commission,--and--thereupon--the--commission-forthwith-shall certify-and-file-in-the-court-a--transcript--of--the--entire record--in--the-proceeding,-including-all-the-evidence-taken and-the-report-and--order--of--the--commission.---Upon--such filing--of--the-petition-and-transcript-the-court-shall-have jurisdiction--of--the--proceeding--and---of---the---question determined--therein--and--shall-have-power-to-make-and-enter upon-the-pleadings,-evidence,-and-proceedings-set--forth--in such--transcript--a--decree-affirming,-modifying,-or-setting aside-the-order-of-the-commission,-and-enforcing-the-same-to the-extent-that-such-order--is--affirmed,--and--to~~ A court reviewing an order of the department may issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors ~~pendente--lite~~ pending the suit. ~~The--findings--of--the commission-as-to--the--facts,--if--supported--by--sufficient evidence,-shall-be-conclusive.~~

~~(4)~~--(5) To the extent that the order of the ~~commission~~ department is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of ~~such~~ the order of the ~~commission~~ department. ~~If-either party--shall--apply--to--the--court--for--leave--to---adduce additional--evidence,--and-shall-show-to-the-satisfaction-of~~

~~the-court-that-such-additional-evidence-is-material-and-that there-were-reasonable-grounds-for-the-failure-to-adduce-such evidence-in-the-proceedings-before-the-commission,-the-court may-order-such-additional-evidence-to-be--taken--before--the commission--and--to--be--adduced--upon-the--hearing-in--such manner-and-upon-such-terms-and-conditions-as--to--the--court may--seem-proper.--The-commission-may-modify-its-findings-as to-the-facts,--or--make--new--findings,--by--reason--of--the additional--evidence--so--taken,--and--it--shall--file--such modified-or-new-findings,-which,-if-supported-by--sufficient evidence,--shall--be--conclusive,-and-its-recommendation,-if any,-for-the-modification-or-setting-aside-of--its--original order,--with--the--return-of-such--additional-evidence.--The judgment--and-decree--of-the-court--shall-be--final,--except that--the--same--shall--be-subject-to-review--by-the-supreme court-upon-appeal--as-in-other-cases-of--judgments-of---such courts,---provided,-however,-that-said-appeal-shall-be-taken within-thirty-days-from--the--date--of--the--entry--of--such judgment-or-decree.~~

~~(5)~~--(6) ~~Such--proceedings~~ Proceedings in the district court shall be given precedence over other civil cases pending therein, and shall be in every way expedited. ~~Complaints,-orders,-and-other-processes--of--the--commission under--this--section-may-be-served-by-anyone-duly-authorized by-the-commission,-either-(a)--by-delivering-a--copy--thereof~~

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to the person to be served, or to a member of the partnership to be served, or the president, secretary, or other executive officer or a director of the corporation to be served, or (b) by leaving a copy thereof at the residence or the principal office or place of business of such person, partnership or corporation, or (c) by registering and mailing a copy thereof addressed to such person, partnership or corporation at his or its residence or principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

(6) An order of the commission to cease and desist shall become final (1) upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, (2) upon the expiration of the time allowed for filing a notice of appeal to the supreme court, if the order of the commission has been affirmed, or the petition for review dismissed by the district court and no notice of appeal to the supreme court has been duly filed, or (3) upon the expiration of thirty days from the date of issuance of the remittitur of the supreme court, if such court directs that the order of the

commission be affirmed or the petition for review dismissed.

(7) If the supreme court directs that the order of the commission be modified or set aside, the order of the commission rendered in accordance with the mandate of the supreme court shall become final upon the expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the commission shall become final when so corrected.

(8) If the order of the commission is modified or set aside by the district court and if (1) the time allowed for filing a notice of appeal to the supreme court has expired and no such notice of appeal has been duly filed or (2) the decision of the district court has been affirmed by the supreme court, then the order of the commission rendered in accordance with the mandate of the district court shall become final on the expiration of thirty days from the time such order of the commission was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the commission shall become final when so corrected.

(9) If the supreme court orders a rehearing, or if the

~~case-is-remanded-by-the-district-court-to-the-commission-for a--rehearing,--and--if--(1)--the-time-for-filing-a-notice-of appeal-to-the-supreme-court-has-expired-and-no--such--notice of--appeal--has--been-duly-filed,-or-(2)-the-decision-of-the court-has-been-affirmed-by-the-supreme-court,-then-the-order of-the-commission-rendered-upon-such-rehearing-shall--become final--in--the--same--manner-as-though-no-prior-order-of-the commission-had-been-rendered.~~

~~(10)~~--(7) ~~Any~~ A person, firm, or corporation who violates an order of the ~~commission~~ department to cease and desist after it has become final, and while ~~such~~ the order is in effect shall forfeit and pay to ~~the~~ this state ~~of Montana~~ a penalty of not more than one thousand dollars ~~($1,000.00)~~ ($1,000) for each violation, which shall accrue to ~~the~~ this state ~~of Montana~~ and may be recovered in a civil action brought by ~~the~~ this state ~~of Montana~~.

(8) The remedies and method of enforcement of this chapter provided for in this section ~~shall be deemed~~ are concurrent and in addition to the other remedies provided in this chapter."

Section 134. Section 51-114, R.C.M. 1947, is amended to read as follows:

"51-114. Procedure for establishing cost survey -- hearing -- notice. (1) The ~~Montana--trade--commission--is hereby--empowered--and--directed~~ department shall, whenever

application ~~therefor shall have~~ has been made by ten (10) or more persons, firms, or corporations within ~~any~~ a particular trade or business, ~~to~~ establish the cost survey provided for in section 51-105 ~~of this chapter~~. When petition for ~~such~~ a cost survey has been so presented to the ~~commission~~ department, the ~~commission~~ department shall, as soon as possible, fix a time for a public hearing upon the question of whether ~~such~~ the cost survey should be established. ~~Such~~ The hearing shall be held at the office of ~~said commission~~ the department and upon ~~such~~ that notice ~~as~~ which the ~~commission~~ department may by rule require, ~~provided, however, that~~ However, notice of ~~such~~ the hearing shall be published for at least two (2) successive weeks in ~~such~~ the daily newspaper or newspapers as the ~~commission~~ department may designate as most commonly circulated in the counties to be affected by ~~such~~ the cost survey. ~~Said~~ The notice shall further state the locality or area in respect to which ~~said~~ the cost survey is proposed to be established and the particular trade or business to be affected ~~thereby~~ by it.

(2) At the time fixed in ~~said~~ the notice any person, firm, or corporation ~~shall be entitled to~~ may appear and be heard by the ~~commission~~ department upon all questions to be determined by it as provided in this section. If the ~~commission shall determine~~ department determines that a cost survey shall be established, it shall at the same hearing

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proceed to classify and define the particular trade or business, or parts thereof, to be affected ~~thereby~~, determine and delimit the particular area within which ~~such~~ the trade or business shall be ~~so~~ affected, and find and determine the probable "cost of doing business" or "overhead expense," stated in percentage ~~or percentages~~ of invoice or replacement cost which would probably be incurred by the most efficient person, firm, or corporation ~~within such~~ in the trade or business within ~~such~~ the area.

(3) ~~Provided, however, that where~~ Where the ~~commission shall determine~~ department determines that the probable "cost of doing business" or "overhead expense," stated in percentage ~~or percentages~~ of invoice or replacement cost which would probably be incurred by the most efficient person, firm, or corporation in ~~such~~ the trade or business is the same for the entire state, then ~~and in that event~~ the ~~commission~~ department may, upon proper notice ~~having been~~ given as ~~hereinbefore~~ provided in this section, create one trade area ~~which shall embrace~~ embracing the entire state.

(4) The percentage ~~or percentages so fixed and~~ determined shall be presumed to be the actual "cost of doing business" and "overhead expense" of any person, firm, or corporation in ~~such~~ the trade or business and within the area, affected by ~~such~~ the cost survey."

Section 135. Section 51-115, R.C.M. 1947, is amended

to read as follows:

"51-115. Hearings and investigations -- contempts. ~~(1)~~ The ~~Montana trade commission~~ department for the purpose of conducting hearings and investigations which, in the opinion of the ~~commission~~ department, are necessary and proper for the exercise of the powers vested in it by this chapter ~~shall have~~ has the following powers:

~~(2)~~ (1) The ~~commission, or its duly authorized agents,~~ department shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of ~~any~~ a person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the ~~commission shall have power to~~ department may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the ~~commission~~ department, or before its duly authorized agent conducting the investigation. ~~Any member of the commission or any~~ An agent, duly authorized by the ~~commission~~ department for ~~such~~ those purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. ~~Such~~ The attendance of witnesses and the production of ~~such~~ evidence may be required from any place ~~within the~~ in this state ~~of Montana~~ at any designated place of hearing.

~~(3)~~--(2) In any case of contumacy or refusal to obey a subpoena issued to ~~any~~ a person, any district court of ~~the~~ this state ~~of Montana~~, within any district where the inquiry is carried on or where a person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the ~~commission shall have~~ department has jurisdiction to issue to ~~such~~ that person, an order requiring ~~such person~~ him to appear before the ~~commission~~ department, or its duly authorized agent, and there to produce evidence if so ordered, or there to give testimony ~~touching~~ regarding the matter under investigation~~,~~. ~~and any failure~~ Failure to obey ~~such~~ the order of the court may be punished by ~~said~~ the court as a contempt ~~thereof~~.

~~(4)~~--(3) ~~No~~ A person ~~shall~~ may not be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the ~~commission~~ department, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture~~,~~. ~~but no~~ An individual ~~shall~~ may not be prosecuted or subjected to ~~any~~ a penalty or forfeiture for or on account of ~~any~~ a transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self incrimination, to testify or produce evidence, except that ~~such~~ an individual so testifying ~~shall~~ is not ~~be~~ exempt

from prosecution and punishment for perjury committed in ~~so~~ testifying."

Section 136. Section 51-116, R.C.M. 1947, is amended to read as follows:

"51-116. Alteration of invoices unlawful. It ~~shall be~~ is unlawful for ~~any~~ a person, partnership, firm, corporation, joint stock company, or other association, as defined in section 51-103, to change, alter, substitute, or falsify ~~any~~ an invoice where ~~such~~ the practice tends to injure a competitor or to destroy competition or to mislead ~~any~~ a court or ~~commission~~ the department of business regulation. ~~Said~~ That practice is unfair trade practice and ~~any~~ a person, firm, partnership, corporation, or association resorting to ~~such~~ that trade practice ~~shall be~~ is guilty of a misdemeanor and~~,~~ ~~on conviction, shall be~~ is subject to the penalties provided in section 51-112."

Section 137. Section 60-203.1, R.C.M. 1947, is amended to read as follows:

"60-203.1. ~~"Commissioner"~~ "Department" defined. ~~"Commissioner"~~ Unless the context requires otherwise, in this act, "department" means the ~~Montana commissioner of agriculture for purposes of this act~~ department of business regulation provided for in Title 82A, chapter 4."

Section 138. Section 60-203.2, R.C.M. 1947, is amended to read as follows:

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"60-203.2. Enforcement of chapter -- rules ~~and regulations~~. ~~The provisions of this~~ This chapter shall be enforced by the ~~commissioner of agriculture~~ department. ~~He~~ It may ~~promulgate~~ adopt necessary and reasonable rules ~~and regulations~~ for the interpretation of the provisions and intent of this chapter, and ~~the same shall~~ those rules have the force and effect of law."

Section 139. Section 60-217, R.C.M. 1947, is amended to read as follows:

"60-217. Samples of product may be taken by ~~commission~~ department or user -- inspection by ~~commission~~ department -- interference with inspections -- inspectors -- employment. (1) For the purpose of obtaining information regarding suspected violation of this act, ~~said commissioner or any member thereof, or duly authorized representative~~ the department shall have access to all places where the commodities ~~enumerated herein~~ subject to regulation under this act are sold, offered for sale or kept for sale, manufactured, transported, or stored, and may take samples ~~therefrom~~ for analysis upon tendering payment ~~therefor~~ for them.

(2) ~~Any~~ A user or customer ~~shall have the right~~ may, upon tendering payment, ~~therefor to~~ receive from ~~any~~ a dealer, a sample of ~~any~~ a commodity sold for the purpose of having an analysis and a test ~~thereof~~ made by ~~the state~~

~~chemist through~~ the ~~commissioner~~ department.

(3) The ~~commissioner, or any duly authorized representative thereof shall have the right to~~ department may inspect any of the commodities ~~enumerated herein~~ subject to this act, whether ~~the same~~ they originate at points ~~without~~ outside the state or otherwise and whether ~~the same~~ they are in transport or at rest in places where they are dangerous to human life or public safety.

(4) ~~Any~~ A person obstructing ~~any~~ an entry or inspection authorized by this section, or failing upon request to assist ~~therein shall be~~ in it is in violation of this act. The ~~commissioner~~ department shall employ from time to time ~~such~~ those inspectors ~~as said commissioner shall deem~~ it considers necessary to carry out ~~the provisions of~~ this act, ~~and said commissioner shall fix the compensation of such inspectors.~~"

Section 140. Section 60-219, R.C.M. 1947, is amended to read as follows:

"60-219. Revocation of license for violations -- hearing required. If the ~~commissioner shall find~~ department finds that ~~any~~ a dealer operating under this act has violated any of the provisions ~~hereof~~ of it, or of any lawful order or decision of the ~~commissioner~~ department, ~~promulgated~~ adopted pursuant to ~~the provisions of~~ this act, ~~the commissioner~~ it shall, after due hearing, ~~thereon,~~

noticed for not less than ten (10) days, revoke, cancel, or suspend any license. ~~that it [he] has theretofore granted, and such~~ The revocation, cancellation or suspension, may be conditioned on ~~such~~ those terms ~~as to~~ which the ~~commissioner may seem~~ department considers just and proper."

Section 141. Section 60-220, R.C.M. 1947, is amended to read as follows:

"60-220. Revocation of license of petroleum dealers for unreasonable or discriminatory prices -- procedure. The ~~commissioner is hereby vested with authority to~~ department may revoke the license to engage in the business of selling gasoline and other petroleum products ~~within the~~ in this state ~~of Montana~~, issued ~~by such commissioner~~ to ~~any~~ a person, firm, partnership, association, or corporation, where ~~such~~ that person, firm, partnership, association, or corporation is by ~~such commissioner~~ the department found guilty of charging an exorbitant or unreasonable price for gasoline sold ~~within the~~ in this state to residents of the state, or of discriminating between individuals or localities ~~within the~~ in this state in the prices charged for gasoline, or of discriminating between citizens of this state and citizens of adjoining states, to the disadvantage of the former, in the prices charged for gasoline. Anybody aggrieved by the action of ~~such~~ a person, firm, partnership, association, or corporation in ~~so~~ charging an exorbitant or

unreasonable price for gasoline or in ~~so~~ discriminating between individuals or localities or in ~~so~~ discriminating between citizens of this state and citizens of adjoining states may file written charges with ~~such commissioner~~ the department against ~~such~~ the person, firm, partnership, association, or corporation. ~~and thereupon the commissioner~~ The department shall then issue a citation to ~~such~~ the person, firm, partnership, association, or corporation to show cause before ~~the commissioner~~ it within twenty (20) days ~~thereafter~~ why his, their, or its license should not be revoked. ~~Such~~ The person, firm, partnership, association, or corporation may appear by counsel at the hearing and contest the charge. If the charge ~~be~~ is established by a preponderance of the evidence the commissioner shall make an order revoking the license, otherwise the charge shall be dismissed. ~~Within thirty days after the order of revocation is made such person, firm, partnership, association or corporation may appeal therefrom to the district court of the county in which the hearing was had. The appeal must be tried in the district court upon the record made before the commissioner, but it shall not of itself result in staying the orders of revocation.~~ Nothing provided in this act is intended to interfere with or regulate commerce between states, the legislature in passing ~~the same~~ this act being actuated solely by a desire to

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protect the citizens of ~~Montana~~ this state against imposition."

Section 142. Section 60-223, R.C.M. 1947, is amended to read as follows:

"60-223. Petroleum products dealers -- definition of terms. ~~Meaning of terms when used in this act: (1) The terms "state sealer" and "deputy sealer" mean, respectively, the commissioner of agriculture of the state of Montana and his deputy sealers of weights and measures of the state of Montana.~~ Unless the context requires otherwise in sections 60-223 through 60-233:

~~(2)~~ (1) ~~The words "sell"~~ "Sell" and "sale" ~~shall also mean~~ means barter and exchange.

~~(3)~~ (2) ~~The term "dealer"~~ "Dealer" means all persons, firms, copartnerships, corporations, trusts, or agencies.

~~(4)~~ (3) ~~A petroleum dealer~~ "Petroleum dealer" ~~is~~ means a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer, or in the business of selling or offering or advertising for sale or in the business of refining or manufacturing or keeping for sale ~~within the~~ in this state ~~of Montana~~ any gasoline, kerosene, distillate, road oil, fuel oil, lubricating oil, and greases, or any oil or gas or oil and gas product, except as otherwise defined as a liquefied petroleum dealer in subsection ~~five (5)~~ (4).

~~(5)~~ (4) ~~A liquefied~~ "Liquefied petroleum ~~dealer~~ dealer" ~~is~~ means a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer, or in the business of selling or offering or advertising for sale or in the business of refining or manufacturing or keeping for sale ~~within the~~ in this state ~~of Montana~~ any petroleum product composed predominately of any of the following hydrocarbons, or mixtures thereof: Propane, propylene, butanes (normal butane or isobutane), and butylenes.

(5) "Department" means the department of business regulation provided for in Title 82A, chapter 4."

Section 143. Section 60-224, R.C.M. 1947, is amended to read as follows:

"60-224. License required as a condition precedent to the right to do business. ~~It shall be a violation of this act for any~~ A petroleum dealer or liquefied petroleum dealer ~~to~~ may not do business in ~~the~~ this state ~~of Montana~~ until a nontransferable license has been issued to ~~said dealer~~ him by the ~~state sealer~~ department. ~~Such~~ The license shall be obtained by the dealer by making application to the ~~state sealer~~ department upon ~~such~~ blank forms ~~as may be~~ provided by the ~~state sealer~~ department for the right to do business in ~~the~~ this state ~~of Montana~~, and after the application has been ~~made and~~ filed, the license, without fee, shall be

issued. ~~Any~~ A dealer who has not ~~applied--for--and~~ been issued a license for the right to do business in ~~the~~ this state ~~of-Montana~~ by the ~~state-sealer~~ department and who is found selling or offering for sale or delivering or distributing to a consumer shall, upon conviction, be fined as provided by this act~~.~~ ~~and--any~~ A vehicle tank, or vehicle tank and meter, or any other measuring device used by ~~said~~ that dealer for ~~such~~ the delivery or distribution may be confiscated and seized as evidence by the ~~state sealer--or--his-deputy-sealers~~ department. The ~~state-sealer or-his-deputy-sealers-shall~~ department and its employees and agents are not ~~be~~ liable to the owner or any other persons, firms, copartnerships, corporations, trusts, or agencies for damages, directly or indirectly, caused by or resulting from ~~such~~ the seizure."

Section 144. Section 60-228, R.C.M. 1947, is amended to read as follows:

"60-228. Petroleum and liquefied petroleum vehicle tank license fees. (1) The license fee for all petroleum or liquefied petroleum vehicle tanks without meters used for distribution of ~~such~~ those products ~~shall-be~~ is as follows: Up to and including two hundred (200) gallons, eight dollars ($8); over two hundred (200) and including three hundred (300) gallons, ten dollars ($10); over three hundred (300) and including five hundred (500) gallons, twelve dollars

($12); over five hundred (500) and including one thousand (1,000) gallons, sixteen dollars ($16); over one thousand (1,000) and including two thousand (2,000) gallons, twenty dollars ($20); for each additional one thousand (1,000) gallons over two thousand (2,000) gallons, four dollars ($4).

(2) All licenses ~~shall---be~~ are annual and nontransferable and ~~shall~~ expire December 31. There ~~shall be~~ is an additional charge of fifty per cent (50%) on all license fees, required by this act, that are not paid before March 1 of each year, where the vehicle tank, or meter, or measuring device is in use. If ~~such~~ the fee is not paid the equipment shall be sealed and removed from service, by the ~~state--sealer-or-his-deputy-sealers~~ department, and it ~~shall be-a-violation-of-this-act~~ is unlawful for anyone to use the device or break the seal until all ~~such~~ the fees have been paid."

Section 145. Section 60-229, R.C.M. 1947, is amended to read as follows:

"60-229. Dispensation of petroleum products. It ~~shall be~~ is unlawful to make hose delivery from petroleum vehicle tanks unless the tanks have been calibrated by the ~~state sealer---or--his--deputy--sealers~~ department. Part of a compartment delivery can only be made by an approved, calibrated, and sealed meter or an approved can. Gauge

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stick measurement will not be permitted. All tank markers must be positioned and sealed as provided by the ~~state sealer~~ department. The ~~state-sealer~~ department shall, by proper regulation, fix fees for retesting meters or measuring devices or vehicle tanks used for distribution to a consumer by petroleum or liquefied petroleum dealers, and for any other special service rendered."

Section 146. Section 60-230, R.C.M. 1947, is amended to read as follows:

"60-230. Dispensation of liquefied products. It ~~shall~~ be is unlawful to sell or deliver liquefied petroleum to a consumer, as a liquid, except as provided by this act. Full compartment sales or deliveries may only be made in a manner that shall be provided by the ~~state-sealer~~ department. All other sales or deliveries may only be made through a meter which has been approved, calibrated and sealed by the ~~state sealer-or-his-deputy--sealers,~~ department, or by weight, unless otherwise provided by the ~~state-sealer~~ department."

Section 147. Section 60-231, R.C.M. 1947, is amended to read as follows:

"60-231. Temperature correction of liquefied petroleum to sixty degrees (60°) Fahrenheit when sold to a consumer. It ~~shall--be-a-violation-of-this-act~~ is unlawful to sell or offer for sale or deliver liquefied petroleum to a consumer, as a liquid or by liquid measurement, the measurement of

which has not been temperature corrected to sixty degrees (60°) Fahrenheit, unless otherwise provided by the ~~state sealer~~ department. Temperature correction shall only be made by means of an automatic compensating device which has been approved, calibrated, and sealed by the ~~state-sealer-or his--deputy--sealers~~ department; or by weight as provided by the ~~state-sealer~~ department."

Section 148. Section 60-232, R.C.M. 1947, is amended to read as follows:

"60-232. Rules~~,--regulations~~ and standards. The ~~state sealer-is-hereby-authorized-to-promulgate-and~~ department may adopt ~~such~~ those rules~~,--regulations~~ and standards ~~as--he shall-deem~~ it considers necessary for the administration and enforcement of this act."

Section 149. Section 74-602, R.C.M. 1947, is amended to read as follows:

"74-602. Definitions. (1) Unless ~~otherwise--clearly indicated--by~~ the context requires otherwise, ~~the-following words-when-used~~ in this act:~~,-for-the-purposes-of-this--act, shall--have--the--meanings--respectively-ascribed-to-them-in this-section:~~

(a) "Goods" means all chattels personal, including motor vehicles and merchandise certificates or coupons exchangeable for chattels personal, but not including money or things in action. The term includes goods which, at the

time of the sale or subsequently, are to be so affixed to realty as to become a part thereof whether or not severable ~~therefrom~~ from it.

(b) "Services" means work, labor, and services furnished in the delivery, installation, servicing, repair, or improvement of goods.

(c) "Motor vehicle" means any new or used automobile, mobile home, motorcycle, truck, trailer, semitrailer, truck tractor, and all vehicles with any power, other than muscular power, primarily designed or used to transport persons or property on a public highway, excepting however, any vehicle which runs only on rails or tracks or in the air.

(d) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment transaction and not for the purpose of resale.

(e) "Retail seller" or "seller" means a person who sells goods or furnishes services to a retail buyer in a written retail installment contract or written retail installment transaction.

(f) "Retail installment transaction" means a written contract to sell or furnish, or the sale or furnishing of goods or services, by a retail seller to a retail buyer pursuant to a retail charge account agreement or under a retail installment contract.

(g) "Retail charge account agreement" means an instrument in writing prescribing the terms of retail installment transactions which may be made ~~thereunder~~ under it from time to time ~~pursuant to~~ under which a retail seller gives to a retail buyer the privilege of using a credit card issued by the retail seller or any other person or other credit confirmation or identification for the purpose of purchasing goods or services from the retail seller, from the retail seller and any other person, or from a person licensed or franchised by the retail seller, and under the terms of which a finance charge, as defined in this section may be computed in relation to the buyer's balance in the account from time to time.

(h) "Retail installment contract" or "contract" means an agreement evidencing a retail installment transaction entered into in this state ~~pursuant to~~ under which a buyer promises to pay in one or more deferred installments the time sale price of goods ~~and/or~~ or services, or both. The term includes a chattel mortgage, conditional sales contract, and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration has the option of becoming, the

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owner of the goods upon full compliance with the provisions of the contract.

(i) "Cash sale price" means the price stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge account agreement for which the seller would have sold or furnished to the buyer, and the buyer would have bought or obtained from the seller, the goods or services which are the subject matter of the retail installment transaction, if ~~such~~ the sale had been a sale for cash. The cash sale price may include any taxes, registration, certificate of title, license, and official fees, and cash sale prices for services, if any, and for accessories and their installation and for delivery, servicing, repairing, or improving the goods.

(j) "Official fees" means the fees prescribed by law for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.

(k) "Principal balance" means the cash sale price of the goods or services which are the subject matter of a retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is made therefor and stated in the contract, for insurance and

other benefits and official fees, minus the amount of the buyer's down payment in money or goods.

(l) "Finance charge" means the amount, as limited by section 74-608, in addition to the principal balance, agreed upon between the buyer and the seller, to be paid by the buyer for the privilege of purchasing goods or services to be paid for by the buyer in one or more deferred installments.

(m) "Time sale price" means the total of the cash sale price of the goods or services and the amount, if any, included for insurance and other benefits if a separate identified charge is made therefor and the amounts of the official fees and the finance charge.

(n) "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers. The term includes, but is not limited to, a bank, trust company, investment company, ~~Morris Plan company~~ or savings and loan association, if so engaged. The term ~~shall~~ does not include a person who makes only isolated purchases of retail installment contracts, which purchases are not being made in the course of repeated and successive purchases of retail installment contracts from the same seller.

(o) "Holder" means the retail seller of the goods or services under the retail installment contract or retail

charge account agreement, or a person who establishes and administers retail charge account agreements with retail buyers, the assignee, if the retail installment contract or the retail charge account agreement or the balance in the account under either has been sold or otherwise transferred, or any other person entitled to the rights of the retail seller under any retail installment contract or any retail charge account agreement.

(p) "Person" means an individual, partnership, corporation, association, and any other group however organized.

(q) ~~"Superintendent"~~ "Department" means the ~~state superintendent of banks of the state of Montana~~ department of business regulation provided for in Title 82A, chapter 4.

~~(r) Words in the singular include the plural, the masculine includes the feminine and the neuter, and vice versa.~~

~~(s)~~ (2) This act ~~shall have no application~~ does not apply to the lending of money by banks or other lending institutions and securing loans by chattel mortgages of goods in the ordinary course of lending by ~~such~~ those banks or other lending institutions ~~except~~. However, this act pertains to the extension of credit by ~~such~~ those banks or other lending institutions ~~pursuant to~~ under retail installment contracts or credit cards issued by ~~such~~ those

banks or other lending institutions."

Section 150. Section 74-604, R.C.M. 1947, is amended to read as follows:

"74-604. Denial, suspension, or revocation of licenses. (a) Renewal of a license originally granted under ~~this act~~ section 74-603 may be denied, or a license may be suspended or revoked by the ~~superintendent~~ department on the following grounds: (1) Material misstatement of fact in the application for license; (2) willful failure to comply with any provision of this act relating to retail installment contracts; (3) defrauding any retail buyer to the buyer's damage; (4) fraudulent misrepresentation, circumvention, or concealment by the licensee through ~~whatever~~ subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the retail buyer under this act.

(b) If a licensee is a partnership, association, or corporation, it ~~shall be~~ is sufficient cause for the suspension or revocation of a license that any officer, director, or trustee of a licensed association or corporation, or any member of a licensed partnership, has ~~so~~ acted or failed to act so as ~~would be~~ to provide cause for suspending or revoking a license to ~~such~~ that party as an individual. Each licensee ~~shall be~~ is responsible for the acts of ~~any or all of~~ his employees while acting as his

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agent, if ~~such~~ the licensee after actual knowledge of ~~said~~ the acts retained the benefits, proceeds, profits, or advantage accruing from ~~said~~ the acts or otherwise ratified ~~said~~ the acts.

(c) ~~No~~ A license ~~shall~~ may not be denied, suspended, or revoked, except after hearing ~~thereon~~. The ~~superintendent~~ department shall give the licensee at least ten (10) ~~days~~ days written notice, in the form of an order to show cause, of the time and place of ~~such~~ the hearing by registered mail addressed to the principal place of business in this state of ~~such~~ the licensee. The ~~said~~ notice shall contain the grounds of complaint against the licensee. ~~Any~~ An order suspending or revoking ~~such~~ a license shall recite the grounds upon which ~~the same~~ it is based. The order shall be entered upon the records of the ~~superintendent~~ department and ~~shall~~ is not ~~be~~ effective until ~~after~~ thirty (30) ~~days~~ days after written notice ~~thereof given after such entry~~ has been forwarded by registered mail to the licensee at ~~such~~ the principal place of business. No revocation, suspension, or surrender of ~~any~~ a license ~~shall impair~~ impairs or ~~affect~~ affects the obligation of ~~any~~ a lawful retail installment contract acquired previously ~~thereto~~ by the licensee.

~~(d) Any person, licensee, or applicant, considering himself aggrieved by an order of the superintendent may within thirty (30) days from the entry of the order~~

~~complained of, apply for writ of review in accordance with the provisions of chapter 90 of Title 93 of the Revised Codes of Montana of 1947.~~"

Section 151. Section 74-605, R.C.M. 1947, is amended to read as follows:

"74-605. Investigations and complaints. (a) The ~~superintendent, or his duly authorized representatives, shall have the power to~~ department may make ~~such~~ those investigations ~~as he shall deem~~ it considers necessary and, to the extent necessary for this purpose, ~~he~~ it may examine ~~such~~ a licensee or any other person and ~~shall have the power to~~ may compel the production of ~~all~~ relevant books, records, accounts, and documents.

(b) ~~Any~~ A retail buyer having reason to believe that this act relating to his retail installment contract has been violated may file with the ~~superintendent~~ department a written complaint setting forth the details of ~~such~~ the alleged violation and the ~~superintendent~~ department, upon receipt of ~~such~~ the complaint, may inspect the pertinent books, records, letters, and contracts of the licensee and ~~of the~~ retail seller involved, ~~relating to such specific written complaint.~~"

Section 152. Section 74-606, R.C.M. 1947, is amended to read as follows:

"74-606. Powers of ~~superintendent~~ department. (a) The

~~superintendent~~ department shall adopt ~~and--promulgate--such~~ rules ~~and-regulations-as-shall-be~~ necessary to carry out the intent and purposes of this act. All rules ~~and-regulations~~ of general application shall be filed in the office of the ~~superintendent~~ department. A copy of every ~~such~~ rule ~~or regulation~~ shall be mailed to each licensee, postage prepaid, at least fifteen (15) days in advance of its effective date~~;~~. ~~Provided,-however~~ However, the failure of a licensee to receive a copy of ~~such~~ the rules ~~or regulations-shall~~ does not exempt him from the duty of compliance with ~~such~~ those rules ~~and-regulations~~ lawfully ~~promulgated-hereunder~~ adopted under the provisions of this section.

(b) The ~~superintendent-shall-have-power-to~~ department may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before ~~him~~ it in any matter over which ~~he~~ it has jurisdiction, control, or supervision pertaining to this act. The ~~superintendent-shall-have-the-power-to~~ department may administer oaths and affirmations to ~~any~~ a person whose testimony is required.

(c) If ~~any~~ a person ~~shall-refuse~~ refuses to obey ~~any such~~ a subpoena, or to give testimony, or to produce evidence as required ~~thereby~~-by it, ~~any~~ a judge of the district court of the county in which the licensed premises

are located may, upon application and proof of ~~such~~ the refusal, ~~make-an-order-awarding-process-of~~ issue a subpoena or subpoena duces tecum for the witness to appear before the ~~superintendent~~ department and to give testimony, and to produce evidence as required ~~thereby~~-by it. ~~Upon-filing such-order,-in-the-office-of-the-clerk-of--the--said--court,~~ ~~the~~ The clerk of court shall then issue ~~process-of~~ the subpoena, as directed, under the seal of ~~said~~ the court, requiring the person to whom it is directed, to appear at the time and place ~~therein~~ designated in it.

(d) If ~~any~~ a person served with ~~any--such~~ a subpoena ~~shall--refuse~~ refuses to obey ~~the-same,-and~~ it, or to give testimony, ~~and~~ or to produce evidence as required ~~thereby~~ by it, the ~~superintendent~~ department may apply to the judge of the court issuing ~~such~~ the subpoena for an attachment against ~~such~~ that person, as for a contempt. The judge, upon satisfactory proof of ~~such~~ the refusal, shall issue an attachment, directed to any sheriff, constable, or police officer, for the arrest of ~~such~~ that person, and upon his being brought before ~~such~~ the judge, proceed to a hearing of the case. The judge ~~shall--have--power--to~~ may enforce obedience to ~~such~~ the subpoena, and the answering of any question, and the production of any evidence that may be proper by a fine, not exceeding one hundred dollars ($100), or by imprisonment in the county jail, or by both fine and

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imprisonment, and to compel ~~such~~ the witness to pay the costs of ~~such~~ the proceeding ~~to be taxed.~~"

Section 153. Section 82A-401, R.C.M. 1947, is amended to read as follows:

"82A-401. Department of business regulation -- ~~creation~~ -- head. There is ~~created~~ a department of business regulation. The department head is ~~the state examiner provided for in article VII, section 8 of the Montana constitution. He shall serve at the pleasure of the governor.~~ a director of business regulation appointed by the governor in accordance with section 82A-106.

Section 154. There is a new section to be numbered 82A-401.1, R.C.M. 1947, which reads as follows:

82A-401.1. Functions of department. The department and its units are responsible for administering laws pertaining to business regulation, including, but not limited to, laws pertaining to:

(1) Banks and banking (Title 5, chapters 1 through 14);

(2) Building and loan associations (Title 7, chapter 1);

(3) Credit unions (Title 14, chapter 1);

(4) Consumer protection (Title 85, chapter 4);

(5) Supervision of the milk industry (Title 27, chapter 4);

(6) Consumer loans (Title 47, chapter 2);

(7) Sale and marketing of coal (Title 50, chapter 6);

(8) Unfair business practices (Title 51, chapter 1);

(9) Regulation of petroleum products (Title 60, chapter 2);

(10) Retail installment sales (Title 74, chapter 6);

(11) Standard weights and measures (Title 90, chapter 1);

(12) Proprietary post-secondary educational institutions (Title 75, chapter 92).

Section 155. Section 82A-406, R.C.M. 1947, is amended to read as follows:

"82A-406. ~~Milk control board -- continued -- renamed board~~ Board of milk control -- ~~transfer -- functions~~ qualifications -- allocated -- designation. (1) ~~The Montana milk control board, created in Title 27, chapter 4, R.C.M. 1947, is continued, and the board is renamed the~~ There is a board of milk control.

(2) The board consists of five (5) members. A member may not be connected in any way with the production, processing, distribution, or wholesale or retail sale of milk or dairy products. A member may not have held an elective or appointive public office during the two (2) years immediately preceding his appointment, and a member may not hold a public office, either elective or appointive,

during his term on the board. Not more than three (3) members may be of the same political party or residents of the same congressional district.

~~(2)~~--(3) The board is ~~transferred~~ allocated to the department for administrative purposes only as prescribed in section 82A-108 ~~of this act~~.

~~(3)--The board retains only the quasi-judicial functions contained in section 27-407, R.C.M. 1947 (pertaining to setting milk prices). Unless inconsistent with this act, any reference in section 27-407, R.C.M. 1947, to the Montana milk control board means the board of milk control.~~

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112 ~~of this act~~."

Section 156. Section 86-703, R.C.M. 1947, is amended to read as follows:

"86-703. Report of institution holding deposited money. ~~Any~~ A banking institution, or savings or building and loan association, receiving money in trust under ~~the provisions of~~ section 86-702, shall report to the ~~superintendent of banks of the state of Montana, on or~~ department of business regulation before ~~the first day of~~ February 1 of each year, all amounts received and held in trust. This report shall show the name and address of each trustee and cestui que trust, the principal amount remaining

and the interest or dividends paid on each such account."

Section 157. Section 89-1708, R.C.M. 1947, is amended to read as follows:

"89-1708. Delivery of bonds -- disposition of proceeds. ~~In the event that~~ If bonds are sold for cash, they shall be delivered by the board of commissioners to the county treasurer of the county ~~wherein~~ in which the office of the district is located, who shall deliver them to the purchaser upon receipt of the purchase price ~~therefor~~, and after making a complete record of ~~the same~~ them. Delivery of the bonds ~~sold~~ may be made by the county treasurer to the purchaser at any place or places ~~within~~ inside or ~~without~~ ~~the~~ outside this state ~~of Montana~~, and ~~said~~ the county treasurer may receive the proceeds of the sale of ~~said~~ the bonds at ~~said~~ the place or places of delivery. The county treasurer shall ~~thereupon~~ place the proceeds of ~~said~~ the sale to the credit of ~~said~~ the district, and the ~~same~~ proceeds shall be paid out by the county treasurer only upon the written order of the board of commissioners, signed by the president and secretary under the seal of the district. ~~Said~~ The proceeds shall be ~~expended~~ spent only for the purpose ~~or purposes~~ for which ~~said~~ the bonds were issued, ~~and for no other. Provided, in case~~ if any portion of the funds realized from the sale of bonds ~~are~~ is not needed immediately for the purpose for which ~~said~~ the bonds were

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issued, the board of commissioners ~~whenever, in its judgment, the same may be to the best interests of the district, shall have the power and authority to~~ may direct the investment of ~~such~~ the funds, and any other surplus funds of the district, or any portion thereof, in interest-bearing securities of the United States, or of the state of Montana, or in interest-bearing certificates of deposit of national or state banks approved by the ~~state superintendent of banks~~ department of intergovernmental relations~~,~~. ~~provided, however, that in the event of such deposit said banks~~ A bank shall ~~first~~ furnish an indemnity bond to be approved by ~~said~~ the board of commissioners and the ~~state superintendent of banks~~ department of intergovernmental relations. The county treasurer shall transfer to the credit of the district, and place to the credit of ~~such~~ the fund or funds as the board of commissioners may direct, all interest received upon money or securities of the district entrusted to his care."

Section 158. Section 90-153, R.C.M. 1947, is amended to read as follows:

"90-153. Meaning of terms. ~~When used~~ Unless the context requires otherwise, in this act:

(1) ~~The word "person" shall be construed to mean both the plural and singular, as the case demands, and shall include~~ "Person" includes individuals, partnerships,

corporations, companies, societies, and associations.

(2) ~~The words "weight(s) and (or) measure(s)" shall be construed to~~ "Weight," "measure," and "weights and measures" mean all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliances and accessories associated with ~~any or all such~~ those instruments and devices~~, except that the term shall~~ The terms do not ~~be construed to~~ include meters for the measurement of electricity, gas (natural or manufactured), or water when ~~the same~~ they are operated in a public utility system. ~~Such electricity, gas, and water meters are hereby specifically excluded from the purview of this act, and none~~ None of the provisions of this act ~~shall be construed to~~ apply to ~~such~~ electricity, gas, or water meters operated in a public utility system or to any appliances or accessories associated ~~therewith~~ with them.

(3) ~~The words "sell"~~ "Sell" and "sale" ~~shall be construed to mean~~ include, but are not limited to, barter and exchange.

(4) ~~The term "sealer" shall be construed to mean~~ "Department" means the ~~state sealer of weights and measures~~ department of business regulation provided for in Title 82A, chapter 4.

~~(5) The terms "chief sealer" and "deputy sealer" shall be construed to mean, respectively, the state chief sealer~~

~~of-weights-and-measures-and-the-deputy-sealer-of-weights-and measures.~~

~~(6)~~--(5) ~~The--term--"intrastate~~ "Intrastate commerce" ~~shall-be-construed-to-mean~~ means any ~~and--all~~ commerce or trade that is begun, carried on, and completed wholly ~~within the--limits--of-the~~ in this state ~~of-Montana~~, and the phrase "introduced into intrastate commerce" ~~shall-be-construed--to define~~ defines the time and place at which the first sale and delivery of a commodity is made ~~within--the~~ in this state, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.

~~(7)~~--(6) ~~The--term--"commodity~~ "Commodity in package form" ~~shall-be-construed-to-mean~~ means a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive, however, of any auxiliary shipping container enclosing packages that individually conform to the requirements of this act. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, ~~shall--be--construed--to--be~~ is a commodity in package form.

~~(8)~~--(7) ~~A--"consumer~~ "Consumer package" or "package of consumer commodity" ~~shall--be--construed--to--mean~~ means a

commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.

~~(9)~~--(8) ~~A--"nonconsumer~~ "Nonconsumer package" or "package of nonconsumer commodity" ~~shall-be-construed-to mean-any~~ means a commodity in package form other than a consumer package, and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.

(9) "Barrel," when used in connection with fermented liquor, means a unit of thirty-one (31) gallons.

(10) "Ton" means a unit of two thousand (2,000) pounds avoirdupois weight.

(11) "Cord," when used in connection with wood intended for fuel purposes, means the amount of wood that is contained in a space of one hundred twenty-eight (128) cubic feet when the wood is ranked and well stowed.

(12) "Weight," when used in connection with any commodity, means net weight."

Section 159. Section 90-156, R.C.M. 1947, is amended to read as follows:

"90-156. State standards of weight and measure. ~~Such~~

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Those weights and measures in conformity with the standards of the United States as have been supplied to the state by the federal government or otherwise obtained by ~~Montana~~ this state for use as state standards shall, when ~~the same shall~~ they have been certified as being satisfactory for use as such by the national bureau of standards, be the state standards of weight and measure. The state standards shall be kept in a safe and suitable place in the office or laboratory of the ~~state division of weights and measures,~~ ~~they~~ department. They shall not be removed from ~~the said office or laboratory~~ there except for repairs or for certification, and they shall be submitted at least once in ten (10) years to the national bureau of standards for certification."

Section 160. Section 90-159, R.C.M. 1947, is amended to read as follows:

"90-159. General powers and duties of ~~sealer~~ department. The ~~sealer~~ department shall have the custody of the state standards of weight and measure and of the other standards and equipment provided for by this act, and shall keep accurate records of ~~the same~~ them. The ~~sealer~~ department shall enforce the provisions of this act. ~~He~~ It shall ~~have and keep a general supervision over~~ supervise the weights and measures offered for sale, sold, or in use in ~~the~~ this state."

Section 161. Section 90-160, R.C.M. 1947, is amended to read as follows:

"90-160. Specific powers and duties of ~~sealer~~ department -- ~~regulations~~ rules. The ~~sealer~~ department shall ~~issue~~ adopt from time to time reasonable ~~regulations~~ rules for the enforcement of this act, which ~~regulations shall~~ rules have the ~~force and~~ effect of law. These ~~regulations~~ rules may include (1) schedules of fees for testing and certification, (2) standards of net weight, measure, or count, and reasonable standards of fill for any commodity in package form, (3) rules governing the technical and reporting procedures to be followed and the report and record forms and marks of approval and rejection to be used by ~~sealers of weights and measures~~ the department in the discharge of ~~their~~ its official duties, (4) exemptions from the sealing or marking requirements of section ~~14--[90-166]~~ 90-166 ~~of--this act~~ with respect to weights and measures of ~~such~~ a character or size that ~~such~~ sealing or marking would be inappropriate, impracticable, or damaging to the apparatus ~~in question~~ involved, and (5) rules governing the voluntary registration of servicemen and service agencies. These ~~regulations~~ rules shall include specifications, tolerances, and other technical requirements for weights and measures ~~of--the character of those specified in~~ subject to inspection and testing under section ~~10-[90-162]~~ 90-162 ~~of~~

~~this--act~~, designed to eliminate from use, without prejudice to apparatus that conforms as closely as practicable to the official standards, those (1) that are not accurate, (2) that are ~~of-such-construction-that-they-are-faulty-(that-is,-that-are~~ not reasonably permanent in their adjustment or will not repeat their indications correctly~~)~~, or (3) that facilitate the perpetration of fraud. The specifications, tolerances, and other technical requirements for commercial weighing and measuring devices, together with amendments thereto, as recommended by the national bureau of standards and published in national bureau of standards handbook 44 and supplements thereto, or in any publication revising or superseding handbook 44, ~~shall-be~~ are the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices of ~~the~~ this state ~~of-Montana~~, except in so far as specifically modified, amended, or rejected by a ~~regulation~~ rule issued by the ~~sealer:--For-the-purposes--of--this--act,~~ department. An apparatus shall be ~~deemed~~ considered to be "correct" when it conforms to all applicable requirements ~~promulgated~~ adopted as specified in this section. Other apparatus shall be ~~deemed~~ considered to be "incorrect.""

Section 162. Section 90-161, R.C.M. 1947, is amended to read as follows:

"90-161. ~~Sealer~~ Department -- testing at

state-supported institutions. The ~~sealer~~ department shall from time to time test all weights and measures used in checking the receipt or disbursement of supplies in every institution for the maintenance of which moneys are appropriated by the legislature, reporting ~~his~~ its findings, in writing, to the ~~supervisory-board-and--to--the~~ executive officer of the institution concerned."

Section 163. Section 90-162, R.C.M. 1947, is amended to read as follows:

"90-162. ~~Sealer~~ Department -- general testing. When not otherwise provided by law, the ~~sealer-shall-have-the-power-to~~ department may inspect and test, to ascertain if they are correct, all weights and measures kept, offered, or exposed for sale. ~~It-shall-be-the-duty-of-the-sealer~~ The department, within a twelve-month period~~,~~ or less frequently if in accordance with a schedule issued by ~~him~~ it, and as ~~much-oftener~~ often as ~~he-may-deem~~ it considers necessary, ~~to~~ shall inspect and test, to ascertain if they are correct, all weights and measures commercially used (1) in determining the weight, measurement, or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure, or of count, or (2) in computing the basic charge or payment for services rendered on the basis of weight, measure, or of count~~:~~. ~~Provided,-that-with~~ With respect to single-service devices ~~(that-is,-devices~~ designed

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to be used commercially only once and to be then discarded; and with respect to devices uniformly mass-produced, as by means of a mold or die, and not susceptible of individual adjustment, tests may be made on representative samples of ~~such~~ the devices; and the lots of which ~~such~~ the samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests on ~~such~~ the samples~~;~~. ~~And--provided--further,--that--any~~ An itinerant peddler or hawker, using weights and measures, shall register his name and address with the ~~chief-sealer-of-weights-and-measures~~ department, in order that his equipment can be tested in accordance with the provisions of this law."

Section 164. Section 90-163, R.C.M. 1947, is amended to read as follows:

"90-163. ~~Sealer~~ Department -- investigations. The ~~sealer~~ department shall investigate complaints made to ~~him~~ it concerning violations of ~~the-provisions-of~~ this act~~;~~. ~~and~~ It shall, upon ~~his~~ its own initiative, conduct ~~such~~ those investigations ~~as--he-deems~~ it considers appropriate and advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations ~~of-the-provisions~~ of this act and to promote the general objective of accuracy in the determination and representation of quantity in commercial

transactions."

Section 165. Section 90-164, R.C.M. 1947, is amended to read as follows:

"90-164. ~~Sealer~~ Department -- inspection of packages. The ~~sealer~~ department shall, from time to time, weigh or measure and inspect packages or amounts of commodities kept, offered, or exposed for sale, sold, or in the process of delivery, to determine whether ~~the--same~~ they contain the amounts represented and whether they be kept, offered, or exposed for sale or sold in accordance with law. When ~~such~~ those packages or amounts of commodities are found not to contain the amounts represented, or are found to be kept, offered, or exposed for sale in violation of law, the ~~sealer~~ department may order them off sale and may so mark or tag them as to show them to be illegal. In carrying out the provisions of this section, the ~~sealer~~ department may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of the result obtained on a sample selected from and representative of ~~such~~ that lot. ~~No~~ A person ~~shall~~ may not:

(1) sell, or keep, offer, or expose for sale, in intrastate commerce, any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section unless ~~and-until-such~~ the package or amount of commodity has been brought into full compliance with all

legal requirements, or

(2) dispose of any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section and that has not been brought into compliance with legal requirements, in any manner, except with the specific approval of the ~~sealer~~ department."

Section 166. Section 90-165, R.C.M. 1947, is amended to read as follows:

"90-165. ~~Sealer~~ Department -- stop-use, stop-removal, and removal orders. The ~~sealer--shall--have--the--power--to~~ department may issue stop-use orders, stop-removal orders, and removal orders with respect to weights and measures being, or susceptible of being, commercially used, and to issue stop-removal orders and removal orders with respect to packages or amounts or commodities kept, offered, or exposed for sale, sold, or in process of delivery, whenever in the course of ~~his~~ enforcement of ~~the-provisions-of~~ this act ~~he deems~~ it considers it necessary or expedient to issue ~~such~~ those orders~~;~~. ~~and--no~~ A person ~~shall~~ may not use, remove from the premises specified, or fail to remove from the premises specified, any weight, measure, or package or amount of commodity contrary to the terms of a stop-use order, stop-removal order, or removal order issued under ~~the authority of~~ this section."

Sectin 167. Section 90-166, R.C.M. 1947, is amended to

read as follows:

"90-166. ~~Sealer~~ Department -- disposition of correct and incorrect apparatus. The ~~sealer~~ department shall approve for use, and seal or mark with appropriate devices, ~~such~~ those weights and measures ~~as--he~~ which it finds upon inspection and test to be "correct" as defined in section ~~8 [90-160]--of--this--act~~ 90-160, and shall reject and mark or tag as "rejected" ~~such~~ those weights and measures ~~as--he~~ which it finds, upon inspection or test, to be "incorrect" as defined in section ~~8-[90-160]-of--this--act~~ 90-160, but which in ~~his~~ its best judgment are susceptible of satisfactory repair~~:~~. ~~Provided,-that,-such-sealing~~ Sealing or marking ~~shall~~ are not ~~be~~ required with respect to ~~such~~ those weights and measures ~~as~~ which may be exempted therefrom by a ~~regulation~~ rule of the ~~sealer~~ department issued under ~~the-authority-of~~ section ~~8-[90-160]-of-this-act~~ 90-160. The ~~sealer~~ department shall condemn, and may seize and destroy, weights and measures found to be incorrect that, in ~~his~~ its best judgment, are not susceptible of satisfactory repair. Weights and measures that have been rejected may be confiscated and may be destroyed by the ~~sealer~~ department if not corrected as required by section ~~17 [90-169]--of--this--act~~ 90-169, or if used or disposed of contrary to the requirements of section ~~17-[90-169]-of--this act~~ 90-169."

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Section 168. Section 90-167, R.C.M. 1947, is amended to read as follows:

"90-167. ~~Sealer~~ Department -- police powers. ~~--right of entry and stoppage.--With respect to the enforcement of this act and any other acts dealing with weights and measures that he is or may be empowered to enforce, the sealer is hereby vested with special police powers, and is authorized to arrest, without formal warrant, any violator of the said acts, and to seize for use as evidence, without formal warrant, incorrect or unsealed weights and measures or amounts of packages of commodity found to be used, retained, offered, or exposed for sale or sold in violation of law. In the performance of his official duties, the sealer is authorized to enter and go into or upon, without formal warrant, any structure or premises, and to stop any person whatsoever and to require him to proceed, with or without any vehicle of which he may be in charge, to some place which the sealer may specify.~~ In enforcing the provisions of this act or any other law pertaining to weights and measures, the department may, in the manner provided by law for peace officers, arrest violators, conduct searches and inspections, and seize for use as evidence incorrect or unsealed weights and measures or packages of commodities unlawfully used, possessed, offered, or exposed for sale or unlawfully sold."

Section 169. Section 90-169, R.C.M. 1947, is amended to read as follows:

"90-169. Duty of owners of incorrect apparatus. Weights and measures that have been rejected under the authority of the ~~sealer or of a deputy sealer~~ department shall remain subject to the control of the ~~rejecting authority~~ department until ~~such time as~~ suitable repair or disposition ~~thereof~~ of them has been made as required by this section. The ~~owners~~ owner of ~~such~~ rejected weights and measures shall ~~cause the same to be made~~ correct them within thirty (30) days or ~~such~~ a longer period as may be authorized by the ~~rejecting authority, or, in the case~~ department. In place of this, the owner may dispose of ~~the same~~ them, but only in ~~such~~ a manner ~~as is~~ specifically authorized by the ~~rejecting authority~~ department. Weights and measures that have been rejected ~~shall~~ may not again be used commercially until they have been officially re-examined and found to be correct, or until specific written permission for ~~such~~ that use is issued by the ~~rejecting authority~~ department, or until the rejection tag has been removed and the rejected device repaired and placed in service by a person ~~duly~~ properly registered to perform ~~such~~ those acts under a ~~regulation~~ rule issued by the ~~sealer~~ department for the registration of weights and measures servicemen and service agencies."

Section 170. Section 90-170, R.C.M. 1947, is amended to read as follows:

"90-170. Method of sale of commodities -- general. Commodities in liquid form shall be sold only ~~(by)~~ by liquid measure or by weight, and, except as otherwise provided in this act, commodities not in liquid form shall be sold only by weight, by measure of length or area, or by count~~:~~. ~~Provided, that liquid~~ Liquid commodities may be sold by weight and commodities not in liquid form may be sold by count only if ~~such~~ those methods give accurate information as to the quantity of commodity sold~~:~~. ~~And provided further, that the provisions of this~~ This section ~~shall~~ does not apply:

(1) to commodities when sold for immediate consumption on the premises where sold,

(2) to vegetables when sold by the head or bunch,

(3) to commodities in containers standardized by a law of this state or by federal law,

(4) to commodities in package form when there exists a general consumer usage to express the quantity in some other manner,

(5) to concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel, crushed stone, and the like, when sold by cubic measure, or

(6) to unprocessed vegetable and animal fertilizer

when sold by cubic measure.

The ~~sealer~~ department may ~~issue such~~ adopt reasonable ~~regulations as are~~ rules necessary to assure that amounts of commodity sold are determined in accordance with good commercial practice and are so determined and represented as to be accurate and informative to all parties at interest."

Section 171. Section 90-171, R.C.M. 1947, is amended to read as follows:

"90-171. Method of sale of commodities -- packages -- declarations of quantity and origin -- variations -- exemptions. (1) Except as otherwise provided in this act, ~~any~~ a commodity in package form introduced or delivered for introduction into or received in intrastate commerce, kept for the purpose of sale, or offered or exposed for sale in intrastate commerce, shall bear on the outside of the package ~~such~~ definite, plain, and conspicuous declarations of: ~~(1)~~ (a) the identity of the commodity in the package unless ~~the same~~ it can easily be identified through the wrapper or container, ~~(2)~~ (b) the net quantity of the contents in terms of weight, measure, or count, and ~~(3)~~ (c) in the case of any package kept, offered, or exposed for sale, or sold in any place other than on the premises where packed, the name and place of business of the manufacturer, packer, or distributor, as may be prescribed by ~~regulation issued~~ rules adopted by the ~~director~~ department. ~~provided,~~

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~~that, in connection with the declaration required under clause (2), neither the qualifying term "when packed" or any words of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in a package shall be used. And provided further, that under clause (2) the sealer shall, by regulation, establish (a) reasonable variations to be allowed, which may include variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure, (b) exemptions as to small packages, and (c) exemptions as to commodities put up in variable weights or sizes for sale intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer.~~

(2) In connection with the declaration required under subsection 1(b), neither the qualifying term "when packed," nor words of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in a package may be used.

(3) Under subsection 1(b) the department shall, by

rule, establish: (a) reasonable variations to be allowed, which may include variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure, (b) exemptions as to small packages, and (c) exemptions as to commodities put up in variable weights or sizes for sale intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer.

(4) The marking provisions of this section do not apply to unwrapped loaves of bread or to berries and small fruits, sold in conformance with the applicable provisions of this act."

Section 172. Section 90-173, R.C.M. 1947, is amended to read as follows:

"90-173. Method of sale of commodities -- misleading packages. ~~No~~ A commodity in package form ~~shall~~ may not be ~~so~~ wrapped, ~~nor shall it be~~ or in a container ~~so~~ made, formed, or filled, so as to mislead the purchaser as to the quantity of the contents of the package~~,~~. ~~and the~~ The contents of a container ~~shall~~ may not fall below ~~such~~ a reasonable standard of fill ~~as~~ which may ~~have been~~ be prescribed for ~~the~~ that commodity ~~in question~~ by the ~~sealer~~ department."

Section 173. Section 90-175, R.C.M. 1947, is amended to read as follows:

"90-175. Sale by net weight. ~~The word "weight" as used in this act in connection with any commodity shall mean net weight. Whenever any~~ When a commodity is sold on the basis of weight, the net weight of the commodity shall be employed, and all contracts concerning commodities shall be so construed."

Section 174. Section 90-178, R.C.M. 1947, is amended to read as follows:

"90-178. Bread. Each loaf of bread and each unit of a twin or multiple loaf of bread ~~(manufactured)~~ produced or procured for sale, kept, offered, exposed for sale, or sold, whether or not the bread is wrapped or sliced, shall weigh one-half (1/2) pound, one (1) pound, one and one-half (1 1/2) pounds, or a multiple of one (1) pound, avoirdupois weight, within reasonable variations or tolerances that shall be ~~promulgated~~ adopted by ~~regulation by~~ rules of the ~~sealer: provided, that the provisions of this~~ department. This section ~~shall~~ does not apply to biscuits, buns, or rolls weighing eight (8) ounces or less, or to "stale bread" sold and expressly represented at the time of sale as such. ~~and that the marking provisions of section 19-(99-1711) shall not apply to unwrapped loaves of bread.~~"

Section 175. Section 90-182, R.C.M. 1947, is amended

to read as follows:

"90-182. Bulk deliveries sold in terms of weight and delivered by vehicle. When a vehicle delivers to an individual purchaser a commodity in bulk, and the commodity is sold in terms of weight units, the delivery shall be accompanied by a duplicate delivery ticket with the following information clearly stated, in ink or by means of other indelible marking equipment and, in clarity, equal to type or printing: (1) the name and address of the vendor, (2) the name and address of the purchaser, and (3) the net weight of the delivery expressed in pounds. ~~and if~~ If the net weight is derived from determinations of gross and tare weights, ~~such~~ the gross and tare weights also shall be stated in terms of pounds. One of these tickets shall be retained by the vendor, and the other shall be delivered to the purchaser at the time of delivery of the commodity, or shall be surrendered, on demand, to the ~~sealer, or the chief sealer or deputy sealer, who, if he~~ department. If the department desires to retain it as evidence, it shall issue a weight slip in ~~lieu thereof~~ place of the ticket for delivery to the purchaser. ~~provided, that, if~~ If the purchaser, himself, carries away his purchase, the vendor shall be required only to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of commodity delivered to him."

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Section 176. Section 90-184, R.C.M. 1947, is amended to read as follows:

"90-184. Berries and small fruits. Berries and small fruits shall be offered and exposed for sale and sold by weight, or by measure in open containers having capacities of one-half (1/2) dry pint, one (1) dry pint, or one (1) dry quart~~;~~. ~~provided, that the marking provisions of section 19 (90-171) of this act shall not apply to such containers;~~"

Section 177. Section 90-186, R.C.M. 1947, is amended to read as follows:

"90-186. Hindering or obstructing officer -- penalties. ~~Any~~ A person who ~~shall hinder~~ hinders or ~~obstruct~~ obstructs in any way the ~~sealer, the chief sealer, or any one of the deputy sealers~~ department, in the performance of ~~his~~ its official duties ~~shall be~~ is guilty of a misdemeanor, and upon conviction ~~thereof~~ shall be ~~punished by a fine of~~ fined not less than twenty dollars ~~($20.00)~~ ($20) or more than two hundred dollars ~~($200.00)~~ ($200), or ~~by imprisonment for~~ imprisoned not more than three (3) months, or ~~by~~ both ~~such fine~~ fined and ~~imprisonment~~ imprisoned."

Section 178. Section 90-187, R.C.M. 1947, is amended to read as follows:

"90-187. Impersonation of officer -- penalties. ~~Any~~ A person who ~~shall impersonate~~ impersonates in any way ~~the sealer, the chief sealer, or any one of the deputy sealers~~ a

person charged with enforcement of this act by the department, by the use of ~~his~~ its seal or a counterfeit of ~~his~~ its seal, or in any other manner, ~~shall be~~ is guilty of a misdemeanor, and upon conviction ~~thereof~~ shall be ~~punished by a fine of~~ fined not less than one hundred dollars ~~($100.00)~~ ($100) or more than five hundred dollars ~~($500.00)~~ ($500), or ~~by imprisonment~~ imprisoned for not more than one (1) year, or ~~by~~ both ~~such fine~~ fined and ~~imprisonment~~ imprisoned."

Section 179. Section 90-188, R.C.M. 1947, is amended to read as follows:

"90-188. Offenses and penalties. ~~Any person who, by himself, or by his servant or agent, or as the servant or agent of another person, performs any one of the acts enumerated in subparagraphs (1) through (9) of this section shall be guilty of a misdemeanor and, upon a first conviction thereof, shall be punished by a fine of not less than twenty dollars ($20.00) or more than two hundred dollars ($200.00), or by imprisonment for not more than three (3) months, or by both such fine and imprisonment. Upon a second or subsequent conviction thereof, he shall be punished by a fine of not less than fifty dollars ($50.00) or more than five hundred dollars ($500.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.~~

(1) A person may not:

(a) Use or ~~have-in-possession~~ possess for the purpose of using for ~~any~~ a commercial purpose specified in section ~~10-[90-162]~~ 90-162, sell, offer, or expose for sale or hire, or ~~have-in-possession~~ possess for the purpose of selling or hiring, an incorrect weight or measure or any device or instrument used to or calculated to falsify any weight or measure~~.~~;

~~(2)~~--(b) Use, or ~~have-in-possession~~ possess for the purpose of current use for ~~any~~ a commercial purpose specified in section ~~10-[90-162]~~ 90-162, a weight or measure that does not bear a seal or mark ~~such-as--is~~ specified in section ~~14--[90-166]~~ 90-166, unless ~~such~~ that weight or measure has been exempted from testing by ~~the-provisions--of~~ section ~~10--[90-162]~~ 90-162 or by a ~~regulation~~ rule of the ~~sealer~~ department issued under ~~the-authority--of~~ section ~~8-[90-160]~~ 90-160, or unless the device has been placed in service as provided by a ~~regulation~~ rule of the ~~sealer~~ department issued under ~~the-authority-of~~ section ~~8-[90-160]~~ 90-160. ~~of-this-act,-provided,-that,-any~~ A person ~~or-persons making-use-of~~ using weighing or measuring devices subject to this act must report to the ~~sealer-of-weights--and--measures or--his--deputies~~ department, in writing, the number and location of ~~said~~ the weighing or measuring device and must promptly report the installation of any new weighing or

measuring device~~.~~;

~~(3)~~--(c) Dispose of ~~any~~ a rejected or condemned weight or measure in a manner contrary to law or ~~regulation.~~ rule;

~~(4)~~--(d) Remove from ~~any~~ a weight or measure, contrary to law or ~~regulation~~ rule, any tag, seal, or mark placed ~~thereon~~ on it by the appropriate authority~~.~~;

~~(5)~~--(e) Sell, or offer or expose for sale, less than the quantity he represents of ~~any~~ a commodity, thing, or service~~.~~;

~~(6)~~--(f) Take more than the quantity he represents of ~~any~~ a commodity, thing, or service, when, as buyer, he furnishes the weight or measure by means of which the amount of the commodity, thing, or service is determined~~.~~;

~~(7)~~--(g) Keep for the purpose of sale, advertise, or offer or expose for sale, or sell ~~any~~ a commodity, thing, or service in a condition or manner contrary to law or ~~regulation.~~ rule;

~~(8)~~--(h) Use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position which may reasonably be assumed by a customer~~.~~;

~~(9)~~ (i) Violate ~~any~~ a provision of this act or of the ~~regulations--promulgated~~ rules adopted under ~~the-provisions~~

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of this act for which a specific penalty has is not been prescribed.

(2) A person who violates, or who knowingly allows an employee or agent to violate, this section is guilty of a misdemeanor and, upon a first conviction, shall be fined not less than twenty dollars ($20) or more than two hundred dollars ($200), or imprisoned for not more than three (3) months, or both fined and imprisoned. Upon a second or subsequent conviction, he shall be fined not less than fifty dollars ($50) or more than five hundred dollars ($500), or imprisoned for not more than one (1) year, or both fined and imprisoned."

Section 180. Section 90-189, R.C.M. 1947, is amended to read as follows:

"90-189. Injunction. The ~~sealer--is--authorized---to~~ department may apply to any court of competent jurisdiction for, and ~~such~~ that court upon hearing and for cause shown may grant, a temporary or permanent injunction restraining ~~any~~ a person from violating any provision of this act."

Section 181. Section 90-190, R.C.M. 1947, is amended to read as follows:

"90-190. Presumptive evidence. For the purposes of this act, proof of the existence of a weight or measure or a weighing or measuring device in or about any building, enclosure, stand, or vehicle in which or from which is shown

that buying or selling is commonly carried on, ~~shall~~ is, in the absence of ~~conclusive~~ credible evidence to the contrary, be presumptive proof of the regular use of ~~such~~ that weight or measure or weighing or measuring device for commercial purposes and of ~~such~~ the use by the person in charge of ~~such~~ the building, enclosure, stand, or vehicle."

Section 182. Wherever the words "superintendent," "superintendent of banks," or "state superintendent of banks" appear in sections 5-205, 5-206, 5-207, 5-209, 5-211, 5-510, 5-704, 5-803, 5-908, 5-909, 5-1006, 5-1014, 5-1020, 5-1025, 5-1026, 5-1027, 5-1028, 5-1029, 5-1030, 5-1032, 5-1036, 5-1046, 5-1130, 5-1204, 7-104, 7-105, 7-107, 7-113.1, 7-124, 7-128, 7-129, 7-137, 7-151, 74-603, the word "department" is substituted therefor.

Section 183. Wherever the words "superintendent of banks" appear in section 5-1021, the words "state banking board" are substituted therefor.

Section 184. Wherever the word "supervisor" appears in sections 14-142, 14-143, 14-149, 14-154, 14-155, 14-156, the word "department" is substituted therefor.

Section 185. Wherever the words "consumer loan commissioner" or "commissioner" appear in sections 47-205, 47-208, 47-209, 47-212, 47-216, 47-217, 47-221, 47-224, 47-226, 47-227, the word "department" is substituted therefor.

Section 186. Wherever the words "commissioner of agriculture" or "commissioner" appear in sections 60-203.3, 60-204, 60-205, 60-210, 60-211, 60-212, 60-213, 60-214, the word "department" is substituted therefor.

Section 187. Wherever the word "board" appears in sections 51-113, 51-114, 51-115, the word "department" shall be substituted therefor.

Section 188. The publishers of the Revised Codes of Montana, 1947, are directed, under the supervision of the Supreme Court of Montana, to make the substitutions enumerated in sections 190, 190A, 191, 192, 193, and 193A of this act when reprinting sections or portions of sections of the Revised Codes in either supplements to or replacement volumes for the Revised Codes.

Section 189. Sections 5-108, 5-601 through 5-603, 5-606, 5-608, 5-902, 5-1009 through 5-1011, 5-1013, 5-1119 through 5-1121, 5-1301 through 5-1311, 7-152, 27-404, 27-418, 27-420, 27-425, 27-428, 27-429, 47-225, 82-1001 through 82-1011, 82A-402, 82A-403, 90-155, 90-158, 90-168, 90-193, 90-194, 90-621 are repealed.

-End-

STATE OF MONTANA

REQUEST NO. 151-75

FISCAL NOTE

Form BD-15

In compliance with a written request received February 3, 19 75, there is hereby submitted a Fiscal Note for House Bill 470 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 470 revises the requirements for qualifications of persons of Indian blood for fee waivers and includes all post-secondary schools. The state is required to reimburse the respective institutions for the amount of fees waived.

ASSUMPTIONS:

1. Fees which can be waived at universities average $100 per quarter or $300 per year. Fees at vocational technical schools average approximately $200 per year.

2. Approximately 500 more persons per year would qualify for fee waivers at universities. Assume all who are newly eligible would request fee waivers.

3. An estimated 15% of vocational technical students would qualify for fee waivers, or 580 in FY 76 and 640 in FY 77.

FISCAL IMPACT:	FY 76	FY 77
Decrease in university fee collections*	$ 150,000	$ 150,000
Decrease in vocational technical fee collections*	116,000	128,000
Total decrease in fee collections*	$ 266,000	$ 278,000

* Decrease in fee collections are to be reimbursed by the State. Thus, additional state expenditures under House Bill 470 would equal the decrease in fee collections of $266,000 in FY 76 and $278,000 in FY 77.

CONCLUSION:

Enactment of House Bill 470 would result in an increase in State General Fund expenditures of approximately $544,000 during the biennium. Fee reimbursements to the units of post-secondary education are to be used for scholarships under House Bill 470. Therefore, even though the units will be reimbursed for their loss in fees, there will be a decrease in funds available for operating expenses of $300,000 for the universities and $244,000 for the vocational technical schools.

Michael S. Billings

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2/8/75

February 28, 1975

MINUTES OF THE MEETING

BUSINESS AND INDUSTRY COMMITTEE

MONTANA STATE SENATE

Chairman Regan called the meeting of the Business and Industry Committee to order on the above date in room 404 of the State Capitol Building. The meeting was called in order to discuss House Bill 342 an act entitled: An Act Amending Section 70-502, R.C.M. 1947, To Change the Meaning of "Line" with Regard to the Nominal Voltage Level Carried." House Bill 77 an act entitled: An Act Amending Section 7-113, R.C.M. 1947, to Permit State Chartered Building and Loan Associations to Charge an Amount not to Exceed Four Percent (4%) of the Payment Due as Late Payment Penalty on Any Payment More than Fifteen (15) Days Late; and to Add These Late Payment Charges to Any Payment." House Bill 469 an act entitled: An Act For The Codification and General Revision of the Laws Relating to the Department of Business Regulation."

HOUSE BILL 343: Representative Shelden, chief sponsor, presented the bill to the Committee. This bill would amend section 70-502, R.C.M. 1947, and change the meaning of "Line" with regard to the nominal voltage level carried. Representative Shelden then introduced Rod Hanson, Montana Utilities Association, who supported this legislation. He stated that since the original law was passed in 1971 they have had alot of arguments and confusion over it. Les Loble, Montana-Dakota Utilities, opposed the bill. He stated that there has only been 2 or 3 cases where the present law has not worked out. Gene Phillips favored Mr. Lobles comments. He further stated that the voltage does not determine what kind of load it serves. That is determined by the size of the wire. A brief discussion followed with questions from the Committee. Senator Foster asked Mr. Hanson to clarify the point of the conflict in the present law. Mr. Hanson stated that they worked with the utility companies for a year trying to come up with a compromise and could not. Fergus Electric Company and private utilities came to a compromise on the present law.

HOUSE BILL 77: Representative Kvaalen presented the bill to the Committee. This bill would permit state chartered building and loan associations to charge an amount not to exceed 4% of the payment due as late payment penalty on any payment more than 15 days late and to add these late payment charges to any payment. Senator Greely asked if the late payment charge kept building up. Representative Kvaalen stated it was a one time payment.

HOUSE BILL 469: Representative Shelden presented the bill to the Committee. This bill is an act for the recodification and general revision of the laws relating to the Department of Business Regulation. Representative Shelden assured the Committee that there were no substantial changes.

Mr. Henkle said the figures given by Senator Towe regarding Montana Power Compnay's advertising were incorrect and he offered differnt figures. A copy of the chart submitted by Senator Towe and Mr. Henkle's testimony bearing his figures relative to this matter are attached hereto.

Senator Towe proposed an amendment to SB 108 as follows:

Amend page 1, section 1, line 12.
Following: "energy"
Insert: ","

Amend page 1, section 1, line 12.
Following: "and"
Strike: "FOR"

Amend page 1,section 1, line 12.
Following: "safety,"
Insert: "for informing the public of the availability of alternative forms of energy,"

Amend page 1, section 1, line 12.
Following: "and"
Insert: "for"

More questions by the members followed regarding SB 108, and the Public Service Commission's views on the matter. Rep. Fabrega asked Gordon Bollinger if the commission is waiting as to the passage of this bill to determine ways of operating regarding these matters. Mr. Bollinger said SB 150 was much more important to the commissioners and would make a difference to them in carrying out the basis for rate of return.

HB 518...Rep. Tropila, sponsor, gave a brief summary of the bill, and his reasons for sponsoring it. Following Rep. Tropila's testimony, Robert Durkee, representing the Montana Tavern Association, testified as a proponent to this bill. Mr. Durkee's testimony is attached hereto.

Maurice Druhl, also a proponent, testified for the need of this bill. Mr. Druhl represented the Distilled Spirits Council of the United States, Inc.; he said Montana had a unique problem regarding this matter and there was a real difficulty in promoting a new brand. He said the liquor stores hesitated to introduce a new item because they never were allowed to promote it. He said the rules and regulations governing the distillaries needed changing.

Rep. Tropila said many salesman, not being allowed to stay in the state, were forced to have additional expenses trying to cover their areas in such a short time. He said it would bring about twenty more families into the state, if this bill were allowed.

HB 469...Pat Melby, of the Budget And Program Planning Dept., gave a brief resume of the amendments to this bill. The amendments are attached hereto.

The following action was taken by the commitee:

HB 469...Rep. Fabrega moved the bill DO PASS AS AMENDED, and the motion passed unanimously. (A copy of the amendments is attached hereto.)

HB 518...Rep. Tropila moved the bill DO PASS, and the motion passed unanimously.

HB 328... Rep. Quilici moved the amendments to this bill be adopted, and this motion passed, with Rep. Harper voting NO. Then Rep. Quilici moved HB 328 DO PASS AS AMENDED, and that motion passed with Rep.'s Harper and Wood voting NO.

Chairman Shelden informed the committee that an evening meeting would be held on Wednesday, the 19th of February, as well as the regular meeting at 10:30 in the morning of that same day.

There being no further business, the meeting was adjourned.

zd

Arthur H. Shelden

ARTHUR H. SHELDEN, Chairman

making payment in lieu of contributions is entitled to a review by the division or its authorized representative, hereinafter referred to as a deputy. The decision of the deputy shall be deemed to be the decision of the division. The division or the deputy conducting the review may refer the matter to an appeal referee, may decide the application for review on the basis of such facts and information as may be obtained or may hear argument to secure further facts. After such review, notice of the decision shall be given to the employing unit. Such decision made pursuant to such review shall be deemed to be the final decision of the division unless the employing unit or any other such interested party, within five (5) calendar days after delivery of such notification or within seven (7) calendar days after such notification was mailed to his last known address, files an appeal from this decision. Such appeal will be referred to an appeal referee who shall make his decisions with respect thereto in accordance with the procedure prescribed in section 87-107 (c)."

Section 2. This act is effective on April 1, 1975.

Approved April 14, 1975.

CHAPTER NO. 431

AN ACT FOR THE CODIFICATION AND GENERAL REVISION OF THE LAWS RELATING TO THE DEPARTMENT OF BUSINESS REGULATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-109, R.C.M. 1947, is amended to read as follows:

"5-109. Definition of words and terms. *Unless the context requires otherwise, in this act:*

(1) "Capital," "capital stock," and "paid-in capital" mean that fund for which certificates of stock are issued to stockholders.

(2) "Surplus" means a fund paid in or created *under* this act by a bank from its net earnings or undivided profits, which when set apart and designated as such, is not available for the payment of dividends and cannot be used for the payment of expenses or losses so long as such bank has undivided profits.

(3) "Undivided profits" means the credit balance of the profit and loss account of *a* bank.

(4) "Profit and loss account" or "profit and loss" means that account carried on the books of the bank into which all earnings accounts and recoveries are closed, thus exhibiting "gross earnings" and against which all loss and other disbursement items are charged revealing "net earnings" which are then properly closed to "undivided profits accounts" or "undivided profits," out of which dividends are paid and reserves set aside.

(5) "Net earnings" means the excess of the gross earnings of *a* bank over expenses and losses chargeable against *those* earnings during any one year.

(6) "Time deposits" means all deposits, the payment of which cannot legally be required within thirty (30) days.

(7) "Demand deposits" means all deposits, the payment of which can legally be required when demanded.

(8) "Consolidate" and "merge" mean the same thing and may be used interchangeably in this act.

(9) "Department" means the department of business regulation provided for in Title 82A, chapter 4.

(10) "Board" means the state banking board provided for in section 82A-407."

Section 2. Section 5-202, R.C.M. 1947, is amended to read as follows:

"5-202. Presentation of articles to department of business regulation — secretary of state to issue certificate — when body corporate. *The* articles of agreement shall be presented to the *department of business regulation*, together with an application in writing in the form prescribed by the *department* for a certificate authorizing the proposed corporation to transact within this state the business specified *in the articles of agreement.* Upon the presentation of the articles of agreement, together with *the* application, the *department* shall ascertain whether the requisite capital of *the* bank has been subscribed and been paid up in cash. *It* shall also determine whether the corporation is being formed for any other *purpose* than the legitimate business contemplated by this act, or whether the public convenience and advantage will be promoted by the opening of *the* bank. *It shall determine* whether the corporate name assumed by *the* bank, by reason of the use of any one or more of the words "commercial," "trust," "savings," or "investment," in conjunction with any other word or words, resembles so closely the name of any other bank previously formed under this act *as to be likely to cause confusion. The department* shall also ascertain from the best sources of information at *its* command whether the character and general fitness of the persons named as stockholders command confidence of the community in which *the* bank is proposed to be located. The expenses of the *department* in making the examination required by this *section* shall be paid by the proposed bank, and payment shall be made in advance if required by the *department. All information gathered by the department under this section shall be transmitted to the board for its use in conducting hearings on applications for certificates of authorization."*

Section 3. There is a new R.C.M. section numbered 5-202.1 that reads as follows:

5-202.1. Board to refuse or approve application. The board may refuse or approve an application for a certificate of authorization in accordance with sections 5-607 through 5-614.

Section 4. Section 5-203, R.C.M. 1947, is amended to read as follows:

"5-203. Filing of certificate and articles of agreement. The articles of agreement, together with one of *the* certificates of authorization, issued by the *department*, shall be filed in the office of the clerk and recorder of the county in which is located the principal place of business of the proposed bank. *A* certified copy of the articles of agreement, together with the certificate of authorization, shall be filed with the secretary of state. Upon filing with the secretary of state the articles of agreement and the certificate of authorization, and paying the fee required for the filing of articles of incorporation, the secretary of state shall issue a certificate setting forth that *the* corporation has been duly organized, the amount of its authorized and subscribed capital, and the business in which it is to engage. *This* certificate shall be taken by all courts of this state as evidence of the corporate existence of *the* bank. The *persons* signing and acknowledging the articles of agreement, and their associates and successors, *are then* a body corporate with power of continual succession, and by *that* name they and their successors *are* entitled to have, possess, and enjoy all the rights and privileges conferred by this act."

Section 5. Section 5-208, R.C.M. 1947, is amended to read as follows:

"5-208. Board of directors — qualifications, tenure, and vacancies. The affairs of the bank shall be managed by a board of directors, not less than three (3) or more than eleven (11) in number, all of whom shall be stockholders of *the* bank and citizens of the United States, and of whom at least two-thirds (⅔) must be residents of *this* state. *A* person who *has* been convicted of a crime against the banking laws of the United States or of any state *may not* be elected a director. The directors shall be elected for a term of one (1) year at the annual meeting of the stockholders, which shall be held on the second Tuesday in January of each year. *If* the election *is* not *held* on the day fixed for the annual meeting, the corporation *may* not thereby be dissolved, but an election may be *held* at any other time agreeable to the bylaws of the corporation, and the persons so elected shall hold their office until the second Tuesday *of the following* January, or until others are elected and qualified. In case of death or resignation of one or more of *the* directors, the vacancy shall be filled by the board, and the directors so appointed shall hold office until the next annual election. Every director shall take and subscribe an oath that he will diligently and honestly perform his duty in *the* office, *that he* will not knowingly violate or permit a violation of any of the provisions of this act, *and* that he is the owner in good faith of the required number of shares of stock in the bank standing in his name on the books of the bank. *The* oaths shall be made in duplicate, one copy of which shall be transmitted to the *department* and filed in *its* office, and one copy shall be kept on file in the office of the bank."

Section 6. Section 5-210, R.C.M. 1947, is amended to read as follows:

"5-210. Selection of officers and employees — meetings and minutes. The board of directors *may* elect a president, one or more vice-presidents, cashier, and one or more assistant cashiers, and other officers and employees *which* they may from time to time *consider* to be to the best interest of the bank, and fix their compensation. The president and

at least one vice-president shall be chosen from the board of directors. The board of directors shall also elect a secretary, who shall keep a correct report of the meetings of the board and of the stockholders in a book kept for that purpose, which minutes shall particularly disclose the date of the meetings and the names of the directors or stockholders present. This record of the meetings of the board of directors shall be subscribed to by the presiding officer and secretary. *The* minutes shall be read and approved at the *following* meeting of the board of directors, and the minutes of *the following* meeting shall show *that* fact. *The* minute-book shall be kept in the office of the bank at all times, and shall be presented to the *department* at the time of *its* examination of the books. *The department shall* include in *its* report of examination of *the* bank a statement of the dates on which *the* meetings were held since the last examination of *the* bank by *it*, and the names of the directors in attendance at each of *those* meetings. The board of directors of a bank must hold a meeting at least once a month. *A* person who *makes* a false entry in *the* book, or who *changes* or *alters an* entry made *in it, is* guilty of a misdemeanor."

Section 7. Section 5-214, R.C.M. 1947, is amended to read as follows:

"5-214. Change of place of business and number of directors authorized. *A* bank may, upon approval of the *board*, change its principal place of business from one place to another, in the same county, or in an adjacent county, within this state, and may increase or diminish the number of trustees or directors in the manner provided *in sections 5-215 through 5-217.*"

Section 8. Section 5-216, R.C.M. 1947, is amended to read as follows:

"5-216. Certificate of proceedings — contents and effect. If, at the time and place specified in the notice provided for in section *5-215*, stockholders appear in person or by proxy representing not less than two-thirds (⅔) of all the shares of stock of the corporation, and organize by choosing one of the trustees or directors chairman of the meeting and also a suitable person for secretary, and proceed to a vote of those present in person or by proxy, and if two-thirds (⅔) of the votes representing all the *outstanding* capital stock have been cast in favor of increasing or diminishing the amount of capital stock, or of changing its corporate name, or of changing its principal place of business, a certificate of the proceedings showing a compliance with the provisions of this act, the amount of capital stock actually paid in, the whole amount of debts and liabilities of the corporation, the amount to which the capital stock shall be increased or diminished, or the change in the corporate name of the corporation, or the change in the principal place of business, shall be made out, signed, and verified by the affidavit of the chairman, and be countersigned by the secretary, and *the* certificate shall be acknowledged by the chairman. *The* certificate shall then be sent to the *department which* shall within thirty (30) days of receipt either approve or reject the application for change. The action of the *department* on *the* application *is* final. If *it* approves the *certificate it* shall notify the bank *at which time* the certificate shall be filed in the office of the county clerk and recorder of the county *in which* the bank is located and in the office of the secretary of state. Upon *the* filing, the change *is* effective."

Section 9. Section 5-217, R.C.M. 1947, is amended to read as follows:

"5-217. Change in number of directors — procedure — approval by department. *(1) A* state bank or trust company may increase or diminish the number of its directors or may provide that the number of directors elected at each annual meeting, within the limits specified in this act, shall constitute the board for the year, *with* all vacancies to be filled by the board taking the action, and also may provide that a majority of the full board of directors may increase the number of the directors of the bank, not exceeding two (2) within the limits specified in this act, and appoint persons to fill the resulting vacancies between meetings of the stockholders by amending its articles of incorporation at any regular annual meeting, or at any special meeting called and noticed for that purpose, of the stockholders of the bank or trust company. *However,* the number of directors *may* not at any time be less than three *(3)* or more than eleven *(11).*

(2) When a bank or trust company *decides* to call a special meeting of the stockholders for the purpose of amending its articles of incorporation relative to the number of directors, written or printed notice of *the* meeting must be deposited in the post office addressed to each stockholder of record entitled to vote at *the* meeting under the articles of incorporation or amendments *to them,* and the laws and constitution of Montana, at his last known place of residence at least ten days previous to the date set for the holding of *the* meeting. *In* addition, *the* notice must be published once a week for two consecutive weeks in a newspaper published in the county *where* the principal place of business of *the* corporation is situated. If no newspaper is published in the county it *is* not necessary to publish *the* notice. *However,* the matter of amending the articles of incorporation to change the number of directors may be submitted to and acted upon at any annual meeting of the stockholders without special notice.

(3) If at the time and place specified in the notice of *the* special meeting or at the annual meeting of the stockholders, stockholders representing two-thirds *(⅔)* of all the shares of stock of the corporation appear in person or by proxy and vote in favor of *the* amendment, a certificate of the proceedings showing a compliance of the provisions of this act and the amendment relative to the number of directors shall be prepared, certified and sworn to and filed with the *department. The department* shall, within thirty *(30)* days after the receipt *of the certificate,* either approve or reject the amendment. The action of the *department* on *the* amendment *is* final. If *it* approves the *amendment, it* shall notify the bank, whereupon the certificate with the *department's* approval attached *to it* shall be filed in the office of the county clerk and recorder of the county *in which* the bank is situated, and a certified copy *of it* shall be filed in the office of the secretary of state. Upon the filing of *the* certified copy with the secretary of state, the amendment *becomes* effective."

Section 10. Section 5-301, R.C.M. 1947, is amended to read as follows:

"5-301. Dissolution and disincorporation. Commercial banks, savings banks, trust companies, and investment companies may be dissolved in the manner provided by the laws of *this state* applicable to the dissolution of other corporations. *However, a* bank *or trust company may,* upon a vote of two-thirds (⅔) of its stockholders at a special meeting called for that purpose in accordance with *its* bylaws, voluntarily quit business and liquidate upon the payment of its debts, exclusive of liability to stockholders, or upon agreement with all of its creditors to a plan of liquidation. *A* bank or trust company desiring to voluntarily liquidate shall *apply* to the *department of business regulation* for permission to so liquidate and, in addition to complying with the laws of *this* state governing the liquidation of corporations, shall comply in all respects with the requirements or rules of the *department* governing voluntary dissolution. The board of directors of *a* bank, whose stockholders have voted to place it in voluntary liquidation, shall appoint a liquidating agent to wind up the affairs of *the* bank. *The* liquidating agent, on authority of the board of directors, *may* execute deeds for the transfer of real property and do all things necessary to *carry out* the proper liquidation of *the* bank. Nothing in this section *prevents* the *department* from taking charge at any time when in *its* opinion the interest of creditors or stockholders is not being protected. *The* decision of the *department* in *these* matters *is* controlling."

Section 11. Section 5-403, R.C.M. 1947, is amended to read as follows:

"5-403. Scope of term "liquidating officer" — department of business regulation to file inventory with district court — report. The liquidating officer of a bank *may* decide when the assets of a failed bank are not sufficient to pay the debts, contracts, engagements and liabilities and he may determine the question of the time when and the court where necessary *legal proceedings* shall be *conducted,* subject to the general provisions of law governing venue and place of trial. For the purposes of this section the term "liquidating officer" *includes* every person legally empowered to liquidate the business and affairs of a state bank whether the *liquidation is by the department of business regulation, its* deputies and agents and also *includes* all receivers of state banks qualified to liquidate a state bank under any law of *this state. The* provisions of this *chapter do* not impose any liability on *a* stockholder of a bank which is a member of the Federal Deposit Insurance Corporation. The *department* shall, within ninety (90) days after taking charge of an insolvent bank, *file* with the district court having jurisdiction a complete inventory of all of the property and assets of *the* insolvent bank, such as furniture, fixtures, real estate, mortgages, bonds, *and* notes, secured and unsecured. *It* shall *also* every six *(6)* months or *more often,* if required by the court, *file* with the court a report showing the conditions of the liquidation of *the* bank, the assets that have been liquidated and collected, the amounts and manner of payments made to creditors, the manner in which claims have been handled, and the assets on hand. The report *shall* contain other information the court *requires,* so that the court and the public may be apprised of the condition of *the* bank and the manner in which it is being liquidated with respect to the collection and sale of assets belonging to *the* bank and the manner in which claims are being paid. *The* report and account shall be set for hearing upon *the* notice the court may require and if found to be correct shall be approved by the court."

Section 12. Section 5-504, R.C.M. 1947, is amended to read as follows:

"5-504. Real estate which banks may purchase, hold or convey.

(1) A bank organized under the provisions of this act may purchase, hold, or convey real estate *which*:

(a) Is necessary for the proper transaction of its business, but it shall not invest an amount exceeding fifty per cent (50%) of its paid-up capital and surplus in the lot and building in which the business of the company is carried on, furniture, *equipment* and fixtures, vaults and safety vaults, and boxes necessary or proper to carry on its banking business;

(b) Is mortgaged to it in good faith by way of security for loans previously made or moneys due to the corporations;

(c) Is conveyed to it in satisfaction of debts previously contracted in the course of its business;

(d) It purchases at sales under judgments, decrees, or mortgages held by the company.

(2) Real estate acquired in the manner set forth in *subsections 1(c)* and *1(d) of this section may* not be held longer than five *(5)* years from the date of acquisition, unless special written permission to do so *is* granted by the *department of business regulation. The* real estate *shall* be carried on the books of the bank for an amount not greater than *its* cost to the bank, including costs of foreclosure and other expenses of acquiring title."

Section 13. Section 5-506, R.C.M. 1947, is amended to read as follows:

"5-506. Limitation on real estate loans. *(1) A* commercial bank organized under the laws of *this* state may make real estate loans, secured by first liens upon improved real estate, including improved farm land and improved business and residential properties and may purchase *an* obligation so secured when the entire amount of *the* obligation is sold to the bank. *The* amount of *the* loan *may* not exceed fifty *percent* (50%) of the appraised value of the real estate offered as security, and *the* loan *may not* be made for a longer period than five (5) years, except that:

(a) The loan may be made in an amount not to exceed sixty *percent* (60%) of the appraised value of the real estate offered as security and for a term not longer than twenty (20) years if *the* loan is secured by an amortized mortgage, deed of trust, or *similar* instrument, under the terms of which the installment payments are sufficient to amortize forty *percent* (40%) or more of the principal of the loan within not more than twenty (20) years; and

(b) A commercial bank *may not* make *those* loans in an aggregate sum in excess of the amount of its capital stock paid in and unimpaired plus the amount of its unimpaired surplus or in excess of sixty *percent* (60%) of the amount of its time and saving deposits, whichever is greater.

(2) Loans made to finance the construction of residential or farm buildings and having maturities of not to exceed six (6) months, whether or not secured by a mortgage or a similar lien on real estate upon which the residential or farm building is being constructed, *are* not loans secured by real estate within the meaning of this *section*, but shall be classed as ordinary commercial loans. *A* commercial bank *may not* invest in or be liable on any *of those* loans in an aggregate amount in excess of fifty *percent* (50%) of its actually paid-in and unimpaired capital.

(3) Loans made to establish rural or commercial businesses which are in whole or in part discounted or loaned against as security by a federal reserve bank for any part of which a commitment *has* been made by a federal reserve bank or in which *an agency of the federal government* cooperated or purchases a participation in, *are* not subject to the restrictions or limitations of this *section* upon loans secured by real estate. *A* commercial bank in this state *has* from time to time the same authority to make loans upon real estate *which* may be given by acts of Congress or the federal reserve system to national banks or bank members of the federal reserve system.

(4) The limitations and restrictions *imposed by this section do* not prevent the renewal or extension of loans made *before February 18, 1941,* and *do* not apply to real estate loans which are insured under the provisions of any act of Congress. *Those* limitations and restrictions *do* not apply to the making, extension, or renewal of any loans made under subchapter II of the act of Congress known as the Servicemen's Readjustment Act of 1944, or any amendment or supplement *to that act.*

(5) This section, however, *does* not prevent *a* bank from taking another and immediately subsequent mortgage or deed of trust when it already holds a first mortgage or deed of trust on *the* real estate, *or* from accepting a second lien on real estate to secure the repayment of a debt previously contracted in good faith. *These provisions do not* prevent subsequent liens of any kind from being taken to secure the payment of a debt previously contracted in good faith, when, in the judgment of the directors of *the* bank, *the* subsequent liens are necessary further to secure the payment of any debts and save *the* bank from loss. *"Commercial* bank" as used in this section *means* a bank organized to do *only* the business specified in sections 5-104 to *5-107."*

Section 14. Section 5-508, R.C.M. 1947, is amended to read as follows:

"5-508. Business prohibited unless under department — use of certain words prohibited — court may enjoin. *A* person, firm, company, copartnership, or corporation, either domestic or foreign, not subject to the supervision of the *department*, and not required by the provisions of this act to report to *it*, and which has not received a certificate to do a banking business from the *department may not* advertise that he or it is receiving or accepting money or savings for deposit, investment, or otherwise, and issuing notices or certificates of deposit therefor, or use *an* office sign, at the place where *the* business is transacted, having *on it an* artificial or corporate name, or other words indicating that *the* place or office is the place or office of a bank or trust company, or that deposits are received there or payments made on check, or any other form of banking business transacted. *That* person, or persons, firm, company, copartnership, or corporation, domestic or foreign, *may not* use or circulate letterheads, bill-heads, blank notes, blank receipts, certificates, or circulars, or any written or printed or partly written and partly printed paper, whatever, having *on them an* artificial or corporate name or other word or words indicating that *the* business is the business of a bank, savings bank, or trust or investment company. *That* person, firm, company, copartnership, or corporation, or any agent of a foreign corporation, not

having an established place of business in the state, *may not* solicit or receive deposits or transact business in the way or manner of a bank, savings bank, trust or investment company, or in a manner *which leads* the public to believe that its business is that of a bank, savings bank, trust, or investment company. *A* person, firm, company, copartnership, or corporation, domestic or foreign, not subject to the supervision of the *department*, and not required by the provisions of this act to report to *it*, and which has not received from the *department* a certificate to do a banking business, *may not* transact business under *a* name or title which contains the word "bank," "banker," "banking," "savings bank," "saving," "trust," "trustee," "trust company," or "investment company." *A* person, firm, company, copartnership, or corporation, domestic or foreign, violating *a* provision of this section shall forfeit to the state one hundred dollars *($100)* a day for every day or part *of a day* during which *the* violation continues. Upon *suit* by the *department*, the court may issue an injunction restraining *that* person, firm, company, copartnership, or corporation from further using *those* words in violation of the provisions of this section, or from further transacting business in a manner *which leads* the public to believe that its business is that of a bank, savings bank, trust, or investment company, during the pendency of *the* action and *permanently*, and may *enter any* other order or decree as equity and justice require."

Section 15. Section 5-509, R.C.M. 1947, is amended to read as follows:

"5-509. Capital stock to be paid up — action by department — certain advertising prohibited. *A* person, firm, company, copartnership, or corporation, domestic or foreign, advertising that he or it is receiving or accepting money or savings, and issuing notes or certificates of deposit *for them*, or advertising that he or it is transacting the business of a bank, savings bank, or trust company, or making use of *an* office sign at the place where *the* business is transacted, having *on it an* artificial or corporate name, or other words indicating that *the* place or office is the place or office of a bank, savings bank, or trust company, or that deposits are received there or payments made on check or that interest is paid on deposits, or that certificates of deposit, either with or without interest, are being issued or that any other form of banking business is transacted, and *a* person, firm, company, copartnership or corporation, domestic or foreign, *using* or circulating any letterheads, bill-heads, blank notes, blank receipts, certificates, or circulars, or any written or printed, or partly written and partly printed paper whatever, having *on it an* artificial or corporate name, or advertising that *the* business is the business of a bank, savings bank, or trust company, must have the proper capital stock paid in and set aside for the purpose of transacting *that* business, and must have received from the *department*, as provided for in this act, a certificate to do a banking business. *A* person, firm, company, copartnership, or corporation, domestic or foreign, violating any provision of this section shall forfeit to the state one hundred dollars *($100)* a day for every day or part *of a day* during which *the* violation continues. Upon action brought by the *department*, the court may issue an injunction restraining *a* person, firm, company, copartnership, or corporation from further violating any provision of this section, and may *enter a* further order or decree as equity and justice require. *A* person, firm, company, copartnership, or corporation doing any of the things or transacting any of the business

defined in this section, must transact *that* business according to the provisions of the Bank Act, and the *department may* examine the accounts, books, papers, cash, and credits of *that* person, firm, company, copartnership, or corporation, domestic or foreign, in order to ascertain whether *that* person, firm, company, copartnership, or corporation has violated or is violating any provisions of this section."

Section 16. Section 5-519, R.C.M. 1947, is amended to read as follows:

"5-519. Obtaining property by fraud — false report — refusal to permit inspection of books. A director, officer, agent, or employee of *a* bank who:

(1) Knowingly receives or possesses himself of any of its property, otherwise than in payment for a just demand, and with intent to defraud, omits to make or to cause or direct to be made a full and true entry *of it* in its books and account; or,

(2) Concurs in omitting to make any material entry thereof; or,

(3) Knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition, containing any material statement which is false; or,

(4) Having the custody or control of its books, willfully *refuses* or neglects to make *a* proper entry in the books of *that* corporation as required by law, or to exhibit, or allow *them* to be inspected and extracts to be taken *from them* by the *department, is* guilty of a felony."

Section 17. Section 5-523, R.C.M. 1947, is amended to read as follows:

"5-523. Limitations on loans — liabilities — what included therein — reduction when excessive. *(1)* The total loans to *a* person, copartnership, or corporation by *a* bank, including loans to a copartnership and to the several members thereof, shall at no time exceed twenty *percent* (20%) of the amount of the unimpaired capital and surplus of *that* bank. The discount of bills of exchange drawn in good faith against actual existing values, the discount of bankers, acceptances of other banks, the discount of commercial or business paper actually owned by the person negotiating *it*, and the obligations of the United States or general obligations of any state or of any political subdivision thereof, or obligation issued under authority of the Federal Farm Loan Act, *may* not be considered as money borrowed. *The* limitations *imposed on total loans by this section do not* apply to loans and investments secured by obligations of the United States having a value of one hundred *percent* (100%) of the amount *loaned or invested* or to loans made on warehouse receipts and bills of lading, when *the* warehouse receipts and bills of lading cover nonperishable commodities of the marketable value of at least one hundred twenty per cent (120%) of the amount loaned *on them*. Loans or obligations *are* not subject under this section to any limitation based upon *that unimpaired* capital and surplus to the extent that they are secured or covered by guaranties, or by commitments or agreements to take over or to purchase *them*, made by *a* federal reserve bank or by the United States or *a* department, bureau, board, commission, or establishment of the United States, including *a* corporation wholly owned directly or indirectly by the United States.

(2) The combined liabilities of the several members of *a* firm, copartnership, or unincorporated association to the loaning bank shall be included in the liabilities of *the* firm, copartnership, or unincorporated association. *That* portion of the liabilities of *the* firm, copartnership, or unincorporated assocation for which a member individually *is* legally responsible shall be included in the liabilities of the member in determining the limitations *imposed by this section.* In determining the limitation for loans to a limited partner of a limited partnership, those portions of the liabilities of the limited partnership for which the limited partner is free from liability shall be excluded.

(3) When in the judgment of the *department,* the liabilities of *a* corporation or the combined liabilities of *a* corporation and one or more of its stockholders to *a* bank are excessive, *it* shall require the reduction to *the* limits and within *the* time as *it prescribes.*"

Section 18. Section 5-532, R.C.M. 1947, is amended to read as follows:

"**5-532. Reserve requirements.** *A* bank, except a reserve bank, shall maintain at all times a reserve of *that* percentage of its deposit liabilities as shall be determined by the *department* as provided *in this section,* of which reserve *a* portion the board of directors may determine may be on deposit in banks approved by the *department* as reserve banks. The *department may establish,* raise, or lower reserves which shall be maintained on demand deposits and on time deposits as in *its* judgment banking conditions may justify. *The* power to *establish,* raise, or lower reserves *is* limited to a percentage of deposits not in excess of reserve requirements which may be established for banks that are members of the federal reserve system *and not* less than seventy-five *percent* (75%) of *those* reserve requirements for members of the federal reserve system. A bank approved by the *department* as a reserve bank must at all times maintain a reserve of *the* percentage or percentages as the *department* shall determine from time to time, which shall not be less than the percentages specified *in this section* of its deposit liabilities, of which *a* portion the board of directors may determine may be on deposit in banks approved by the *department* as reserve banks. *A* solvent bank of good repute having a full paid-up capital and surplus of three hundred thousand dollars ($300,000), doing business in *this* state or any *other state,* may be designated by the *department* as a reserve agent for Montana banking institutions. *The* approval or designation may be withdrawn or withheld at any time by the *department* for cause. *When* the reserve of *a* bank *falls* below the amount required *by this section, the* bank *may* not increase its loans or discounts otherwise than by discounting or purchasing bills of exchange payable at sight or on demand, and the *department* shall notify *a* bank whose reserve may be below the amount required, to make good *the* reserve. In arriving at deposit liabilities with regard to bank deposits, the net balance of amounts due to and from other banks shall be taken as the basis for ascertaining the deposit liability to banks against which reserves shall be carried. *However,* a compliance with the federal reserve banking laws, rules and regulations by member banks shall be held to be a compliance with the reserve requirements and conditions of this act, *and entitles those federal reserve member banks to the rights and privileges accruing from compliance with this act.*"

Section 19. Section 5-533, R.C.M. 1947, is amended to read as follows:

"**5-533. Borrowed money.** *A* bank *may not* at any time become indebted either directly or indirectly for borrowed money or rediscounts in an amount in excess of its paid-up capital and surplus, without first obtaining written authority from the *department. Debentures* or certificates of indebtedness issued by *an* investment company to run for a period of three (3) years or more, *may* not be included in the deposit liabilities of *that* investment company, as affected by the provisions of this section."

Section 20. Section 5-604, R.C.M. 1947, is amended to read as follows:

"**5-604. Director of business regulation and employees not to be interested in banks.** Neither the *director of business regulation* nor any bank examiner *may* be interested in or a borrower from any state bank, directly or indirectly."

Section 21. Section 5-607, R.C.M. 1947, is renumbered 82A-407, and is amended to read as follows:

"**82A-407. State banking board — composition — terms — allocation.** *(1)* There is a state banking board.

(2) The board *is* composed of seven (7) members, *including* the director of business regulation, who *is* the chairman of the board. The remaining six (6) members of the board shall be appointed with consideration given banks of small, medium and large size and to geographical distribution. *At* least one (1) banker member and one (1) public member shall be appointed from each congressional district of the state. Two (2) of *the* six (6) members shall be active officers in state banks of Montana, one (1) shall be an active officer of a national bank doing business in Montana and three (3) shall be members of the public, none of whom shall be an officer, director or shareholder of any state or national bank.

(3) The members shall be appointed by the governor for terms of three (3) years. Vacancies shall be filled by appointment for the unexpired term. No member other than the director of business regulation may serve more than two (2) consecutive terms.

(4) The board is allocated to the department for administrative purposes only as provided in section 82A-108."

Section 22. Section 5-610, R.C.M. 1947, is amended to read as follows:

"**5-610. Powers of board.** The state banking board shall:

(1) make final determinations upon applications for *certificates of authorization* for new banks, mergers, consolidations, and relocations of banks;

(2) act in an advisory capacity with respect to the duties and powers given by statute or otherwise to the director of business regulation as said duties and powers relate to banking."

Section 23. Section 5-611, R.C.M. 1947, is amended to read as follows:

"5-611. Rules adopted by board — new banks. The board shall adopt rules *necessary for the administration of this act in accordance with* the Montana Administrative Procedure Act [82-4201 to 82-4225].

In particular, the board shall *adopt* rules concerning the *authorization* of new banks. Such rules shall contain minimum standards under which an application for a new bank shall be determined *including* the following:

(1) a persuasive showing that there is a reasonable public necessity and demand for a new bank at the proposed location;

(2) that the bank will be owned and managed by persons of good moral character and financial integrity, and will be safely and soundly operated;

(3) a persuasive showing that the new bank will have a sufficient volume of business to assure solvency and that establishment of the new bank will be in the public interest."

Section 24. Section 5-612, R.C.M. 1947, is amended to read as follows:

"5-612. Hearings — notice — intervenors. *(1)* A hearing shall be conducted upon all applications for new bank *certificates of authorization, in accordance with* the Administrative Procedure Act [82-4201 to 82-4225] relating to a contested case, whether or not any protest to the application is filed.

(2) A notice of the filing of an application for a new bank *certificate of authorization* shall be mailed to all banks within one hundred (100) miles of the proposed location, measured in a straight line.

(3) A hearing shall be conducted no sooner than thirty (30) days and not later than ninety (90) days following the mailing of such notice.

(4) Any bank filing a written protest with the board prior to the date of the hearing shall be admitted as a "party," as defined in the Administrative Procedure Act, with full rights of a party, including the right of subpoena of witnesses and written materials, the right of cross-examination, the right to have a transcript, and the right to receive all notices, copy of the application, all orders, and the right of judicial review and appeal.

(5) All applications for mergers, consolidations or relocations of banks shall likewise require a hearing, and all of the rights and procedures stated herein shall apply to these matters."

Section 25. Section 5-701, R.C.M. 1947, is amended to read as follows:

"5-701. Report to department of business regulation. *A* bank shall make to the *department of business regulation* regular call reports according to the form which may be prescribed by *the department*, verified by oath or affirmation of the president, vice-president or cashier of *the* bank and attested by the signature of at least two (2) of the directors other than the subscribing officer. Each report shall exhibit in detail, and under appropriate schedules, the resources and liabilities of the bank at the close of business on any past day specified *by the department. The report* shall be transmitted to the *department* within five (5) days after the receipt of a request or requisition *for it*, and in *a* form *the department* may

require. It shall be published as soon as possible in a newspaper published in the place where *the* bank is established, or, if there be no newspaper in the place, then in one published nearest *to that place* in the same county, at the expense of the bank. *Proof* of the publication shall be furnished at *the* times and in *the* manner as may be required by the *department.*"

Section 26. Section 5-702, R.C.M. 1947, is amended to read as follows:

"5-702. Report of declaration of dividend. In addition to the statement required by section *5-701, a* bank shall report to the *department* within ten (10) days after declaring any dividend, showing the amount of *the* dividend and the amount of net earnings in excess of the dividend. *The* statement shall be attested as provided for in the attestation of statement by section *5-701.*"

Section 27. Section 5-703, R.C.M. 1947, is amended to read as follows:

"5-703. Special reports to department. In addition to the information obtained from the report required by section 5-701, the *department may* also require *a* bank to furnish a special report in writing, verified as required by section 5-701, *when* in *its* judgment *the* special report is necessary to inform *it* fully of the actual financial condition and affairs of *the* bank. *A willfully* false statement in the *report is* perjury, and shall be punished *accordingly.*"

Section 28. Section 5-705, R.C.M. 1947, is amended to read as follows:

"5-705. Reports confidential — false reports — penalties. The report and any information contained in the reports and statements provided for, other than *those* reports *which* are required to be published, shall be *considered* secret and for the confidential information of the *department* only. *The* information *may* not be imparted to persons who are not officially associated with the *department*, and the information contained *in them* shall be used by the *department* only in the furtherance of *its* official duties. *The* department *may* exchange information with federal banking *departments* and with departments of other states and furnish information to *legislative auditor or* prosecuting officials who request *it* for use in pursuit of official duties. *An employee or agent of the department*, who violates any of the provisions of this section, or willfully makes a false official report as to the condition of *a* bank, shall be removed from office, and *is* also guilty of a felony. *Upon* conviction, *he* shall be *fined* not exceeding one thousand dollars *($1,000)*, or *imprisoned* in the state penitentiary not exceeding five (5) years, or both *fined and imprisoned.*"

Section 29. Section 5-801, R.C.M. 1947, is amended to read as follows:

"5-801. Assessment on capital stock to make good impairment. *(1) When* the *department of business regulation determines* that an impairment of capital exists in *a* bank, *it* may, in *its* discretion, notify the board of directors of *the* bank by written notice that *the* impairment exists, stating the amount thereof in dollars and percentage of the capital stock, and *it* may, *in its discretion*, order *the* board to make good *the* impairment within ninety (90) days from date of *the* notice.

(2) The board of directors shall, upon receipt of notice, convene and

pass a resolution reciting the receipt of *the* notice of impairment and calling a special meeting of the stockholders of the bank in the manner provided in their bylaws.

(3) The stockholders *at the meeting* shall pass a resolution reciting the facts of receipt of notice from the *department*, notice of impairment and notice of meeting, and assessing themselves by assessing the stock of record, payment of which assessment must be made within the time limit specified by the *department* as provided in notice of impairment.

(4) If there *is* any stock remaining on which the assessment is not paid as provided *in this section*, *it* or *a* part *of it* as is necessary to pay the assessment shall be sold by the board of directors, acting through the cashier or secretary *of the bank*, at public or private sale, as appears best for all concerned, not less than thirty (30) days after the day fixed for payment of assessment. *Notice* of *the* time and place of *the* sale shall be given by registered mail to the stockholders by the board through its cashier or secretary at least ten (10) days prior to the *sale*. *A sale* of stock as provided *in this section causes* an absolute cancellation of the outstanding certificate or certificates evidencing the stock so sold, and *makes them* void in the hands of the *stockholder*, his assigns or pledgees. *A* new certificate shall be issued by the bank to the purchaser for the number of shares purchased, and a new certificate issued to the stockholder of record and delivered to him or any pledgee or assignee *of the stock* for the remaining shares, if any. *The* record of the original certificate sold shall be marked canceled on the books of the bank and *that* record *is* prima facie evidence of the regularity of the proceedings for the sale of *the* stock.

(5) If *a* bank fails to make good its capital impairment upon demand of the *department*, as provided *in this section*, the *department* may *immediately* take charge of *that* bank and proceed to liquidate *it* as in case of insolvency.

(6) If the stock does not sell for *enough* to pay the assessment *on it*, the board of directors may *sue* in the name of the corporation to collect the deficiency from the record holder whose stock has been sold for the assessment."

Section 30. Section 5-901, R.C.M. 1947, is amended to read as follows:

"5-901. Examination and supervision. The *department of business regulation* shall exercise constant supervision over the books and affairs of all banks doing business *in this* state. *It* shall *examine*, at least once a year, each of *those* banks and verify the assets and liabilities of each, and so far investigate the character and value of the assets of each as to ascertain with reasonable certainty that the values are correctly carried on the books. *It* shall further investigate the methods of operation and conduct of business of *the* banks and their systems of accounting, to ascertain whether *the* methods and systems are in accordance with law and sound banking principles. *It* may examine *under* oath, any of the officers, directors, agents, clerks, customers, or depositors of *a* bank *regarding* the affairs and business thereof. *It* may, in the performance of *its* official duties, issue subpoenas and administer oaths. *In* case of *a* refusal to obey *a* subpoena issued by *it*, *the* refusal may at once be reported to the district court of the district in which the bank is located, and *the* court shall enforce obedience to *the* subpoena in the manner provided by law for enforcing obedience to the process of *the* court. In all matters relating to *its* official duties, the *department has* the same power possessed by courts of law to issue subpoenas, and *have* them served and enforced. *All* officers, directors, agents and employees of banks doing business under this act, and all persons having dealings with or knowledge of the affairs or methods of *a bank*, shall at all times afford reasonable facilities for *the* examinations, and make returns and reports to the *department* as *it* may require. *They shall also* attend *hearings* and answer under oath *the department's* inquiries, produce and exhibit *any* books, accounts, documents and property *it desires* to inspect, and in all things aid *it* in the performance of *its* duty."

Section 31. Section 5-910, R.C.M. 1947, is amended to read as follows:

"5-910. Special examinations and fees. Special examinations may be made of *a* bank, trust company, investment company, building and loan association, or credit union when in the judgment of the *department* it *is considered* necessary, and *the* special examination shall be charged for at the rate of one hundred dollars ($100) a day for each person engaged in the examination. All special examination fees or charges shall be paid at the conclusion of the examination and the moneys collected by the *department* shall be paid to the state treasurer, for the credit of the general fund."

Section 32. Section 5-1002, R.C.M. 1947, is amended to read as follows:

"5-1002. Change from state to national bank. Any bank may become a corporation for the purpose of carrying on the business of banking *in* this state, *under* the act of Congress "to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, 1864, and of Title 52 of the Revised Statutes of the United States, *when* stockholders owning two-thirds (⅔) of the stock of *the* bank have voted to become such corporation, or have executed a written consent authorizing its directors to make the certificate required therefor by the laws of the United States, or *when* a majority of the directors of *the* bank, having been authorized in their discretion to make the change, shall, by a vote of *the* majority, decide to become such corporation. *The* cashier of *the* bank shall publish notice thereof for thirty (30) days in *the* newspaper *which* the directors select, and send a like printed notice by mail or otherwise to all nonvoting or dissenting stockholders, and notify the *department of business regulation* that *the* bank has decided to become a corporation under the laws of the United States."

Section 33. Section 5-1012, R.C.M. 1947, is amended to read as follows:

"5-1012. Information obtained by department confidential — penalty for the violation thereof. Any knowledge or information gained or discovered by the *department* in pursuance of *its* powers or duties *is* confidential information of the *department*. *The* information *may* not,

except as provided *in this section*, be imparted to any person not officially associated with the *department. The* information shall be used by the *department* only in the furtherance of *its* official duties, except that the department *may* exchange information with federal banking department and departments of other states and *may* furnish information to prosecuting officials who require *it* for use in pursuit of official duties. *An employee or agent of the department* who violates this section, or willfully makes a false official report as to the condition of *a* bank, shall be removed from office, and *is* also guilty of a felony. *Upon* conviction *he* shall be *fined* not exceeding one thousand dollars *($1,000)*, or *imprisoned* in the state penitentiary not exceeding five (5) years, or both *fined and imprisoned.*"

Section 34. Section 5-1018, R.C.M. 1947, is amended to read as follows:

"**5-1018. Department to make rules.** The *department may* adopt uniform rules to govern the examination and reports of banks and prescribe the form in which banks shall report their assets, liabilities, and reserves."

Section 35. Section 5-1019, R.C.M. 1947, is amended to read as follows:

"**5-1019. Special examination defined.** *An* examination made by the *department* otherwise than in the ordinary routine of the department, and because in *its* opinion the condition of the bank requires *the* examination, and *an* examination made at the request of the board of directors or stockholders of *a* bank, *is* a special examination."

Section 36. Section 5-1024, R.C.M. 1947, is amended to read as follows:

"**5-1024. Conversion of surplus and undivided profits to capital.** A bank having a surplus and undivided profits equal to or in excess of fifty *percent* (50%) of its capital stock, may increase its capital stock by the issuance of new stock for a part of *that* surplus and undivided profits. *The* increase may be made by the vote of two-thirds (⅔) of the stock in person or by proxy, either at a regular annual stockholders' meeting or at a meeting called for *that* purpose in accordance with the bylaws of the corporation. All increases of capital stock made under this section must be accomplished in a manner *conforming* to the requirements of this act *pertaining* to surplus of banks when first incorporated. New capital stock when issued by a bank against its surplus and undivided profits may be issued without the payment of cash *for it*, but *it* shall be charged upon the books of the bank and in the statements *of the bank* against surplus and undivided profits *so* that the combined capital, surplus and undivided profits *are* not reduced by the issuance of *the* new stock. *When* a bank *has* voted to issue any stock as contemplated in this section, it shall certify *that* action to the *department*, *which* shall within thirty (30) days approve or reject the plan. *Its* action shall be final and written notice *of it* shall be given to the bank. If the *department* approves of the issuance of *the* new stock and so notifies the bank, *the bank* shall *then* file *a* certificate *of issuance* with the county clerk and recorder of the county *in which* the bank is located and with the secretary of state. Upon *the* filing with the secretary of state, the increase *becomes* effective."

Section 37. Section 5-1037, R.C.M. 1947, is amended to read as follows:

"**5-1037. Borrowing money — limitations.** *A* bank *may not* borrow money, except to meet its seasonal requirements or unexpected withdrawals. *At* no time shall the bills payable and rediscounts of *a* bank be permitted to exceed in the aggregate an amount equal to the capital and surplus of *the* bank, except with the written consent of the *department. When* it *appears* to the *department* that a bank is borrowing money in excess of the limitation *provided by this section*, or for the purposes other than as specified *in this section, the department* may require it to reduce *the* borrowing within a time to be fixed by *the department.*"

Section 38. Section 5-1058, R.C.M. 1947, is amended to read as follows:

"**5-1058. Definitions.** As used in *sections 5-1059 through 5-1062*, unless the context otherwise requires:

(1) "Bank" includes commercial banks, savings banks, trust companies, any person or association of persons lawfully carrying on the business of banking, whether incorporated or not, and to the extent that the provisions *of sections 5-1059 through 5-1062* are not inconsistent with and do not infringe upon paramount federal law, also includes national banks.

(2) "Officers" means the person or persons designated by the board of directors, board of trustees, or other governing body of a bank, to act for the bank in carrying out the provisions of *sections 5-1059 through 5-1062* or, in the absence of *a* designation or of the officer or officers designated, the president or any other officer currently in charge of the bank or of the office or offices *involved.*

(3) "Office" means any place at which a bank transacts its business or conducts operations related to its business.

(4) "Emergency" means any condition or occurrence which may interfere physically with the conduct of normal business operations at *any* of the offices of a bank, or which poses an imminent or existing threat to the safety or security of persons or property, or both. Without limiting the generality of the foregoing, an emergency may arise as a result of any of the following: fire; flood; earthquake; hurricanes; wind, rain, or snowstorms; labor disputes and strikes; power failures; transportation failures; interruption of communication facilities; shortages of fuel, housing, food, transportation or labor; robbery or attempted robbery; actual or threatened enemy attack; epidemics or other catastrophes; riots, civil commotions, and other acts of lawlessness or violence, actual or threatened."

Section 39. Section 5-1059, R.C.M. 1947, is amended to read as follows:

"**5-1059. Power of department.** *When* the *department* is of the opinion that an emergency exists, or is impending, in this state or in any part

of this state, *it* may, by proclamation, authorize banks located in the affected area to close any of their offices. In addition, if the *department* is of the opinion that an emergency exists, or is impending, which affects, or may affect, a particular bank or banks, or a particular office or offices thereof, but not banks located in the area generally, *it* may authorize the particular bank or banks, or office or offices so affected, to close. The office or offices so closed shall remain closed until the *department* proclaims that the emergency has ended, or until such earlier time as the officers of the bank determine that one or more offices, theretofore closed because of the emergency, should reopen, and, in either event, for such further time thereafter as may reasonably be required to reopen."

Section 40. Section 5-1060, R.C.M. 1947, is amended to read as follows:

"**5-1060. Powers of officers.** *(1) When* the officers of a bank are of the opinion that an emergency exists, or is impending, which affects, or may affect, *any* of a bank's offices, they *may*, in the reasonable and proper exercise of their discretion, determine not to open any of *those* offices on any banking day or, if having opened, to close any of *those* offices during the continuation of *the* emergency, even if the *department* has not issued and does not issue a proclamation of emergency. *An* office so closed shall remain closed until the officers determine that the emergency has ended, and for *a* further time thereafter as may reasonably be required to reopen. *However*, in no case shall *an* office remain closed for more than forty-eight (48) consecutive hours, excluding other legal holidays, without requesting the approval of the *department*.

(2) The officers of a bank may close any of the bank's offices on any day designated, by proclamation of the president of the United States or the governor of this state, as a day of mourning, rejoicing, or other special observance."

Section 41. Section 5-1061, R.C.M. 1947, is amended to read as follows:

"**5-1061. Notice to department.** A bank closing an office *under* authority granted under section *5-1060(1)* shall give as prompt notice of its action as conditions will permit and by any means available, to the *department*, and in the case of a national bank, to the comptroller of the currency."

Section 42. Section 5-1062, R.C.M. 1947, is amended to read as follows:

"**5-1062. Effect of closing.** *(1) A* day on which a bank, or any of its offices, is closed during any part of its normal banking hours under *sections 5-1059 and 5-1060* with respect to *that* bank or, if not all of its offices are closed, then with respect to *the* office or offices which are closed, *shall be* a legal holiday for all purposes with respect to any banking business. No liability, or loss of rights of any kind, on the part of *a* bank, or director, officer, or employee thereof, *may* accrue or result by virtue of *a* closing authorized by *sections 5-1059 and 5-1060*.

(2) The provisions of *sections 5-1058 through 5-1062 are* in addition

to any other law of this state or of the United States, authorizing the closing of a bank or excusing the delay by a bank in the performance of its duties and obligations because of emergencies or conditions beyond the bank's control, or otherwise."

Section 43. Section 5-1101, R.C.M. 1947, is amended to read as follows:

"**5-1101. Grounds for closing bank.** *(1) When* it *appears* to the *department of business regulation* that:

(a) A bank has willfully violated its charter or *a* law of this state;

(b) A bank has willfully violated *a* general rule of the *department*, made in accordance with law;

(c) The capital of *a* bank is impaired or for any reason is below the amount required by law and has not been made good after notice, as provided by law, or without *that* notice, in event a majority of the board of directors of *the* bank notify the *department* in writing that the *impairment* cannot be made good;

(d) A bank cannot meet or has failed to meet its liabilities as they become due in the regular course of business;

(e) A bank's reserve has fallen below the amount required by law and it has failed to make good *that* reserve within thirty (30) days after being requested to do so by the *department*, or, without *that* notice, if a majority of the directors, in writing, notify the *department* that *the* reserve cannot be made good within thirty (30) days, or if it is continually allowing its reserve to fall below the required amount;

(f) A bank is conducting business in an unsafe and unauthorized manner, or is in an unsafe or unsound condition;

(g) A bank refused to submit its papers, books and concerns to the inspection of the *department*; or,

(h) An officer of *a* bank has refused to be examined *under* oath *regarding* the affairs, business or concerns of any bank in so far as *they* relate to solvency or matters having to do with the supervision by the *department; then the department may, in its discretion, close the bank and take possession of all the books, records, assets and business of every description of the bank, and hold them and retain possession of them until the bank is authorized by the department to resume business, or its affairs are liquidated as provided in this chapter, and it shall do so in cases where a bank comes into its possession voluntarily, or in the manner provided by law.*

(2) The powers and authority conferred on the *department* by this section, except in cases of voluntary surrender *are* discretionary and not mandatory. *As* long as *the department* acts in good faith *the department and its employees and agents may not* be held liable civilly or criminally or upon their official bonds *for* action taken *under this section* or for any failure to act *under it*."

Section 44. Section 5-1102, R.C.M. 1947, is amended to read as follows:

"**5-1102. Penalty for closing bank with criminal intent.** If *an employee or agent of* the department, as a result of malice or for personal gain, *declares a* bank insolvent, he *is* subject to *a* fine not exceeding one thousand dollars *($1,000)* or imprisonment in the county jail not exceeding one (1) year, or both, and shall forfeit his office."

Section 45. Section 5-1103, R.C.M. 1947, is amended to read as follows:

"**5-1103. Bank may be placed in department's possession.** *A* bank may place its affairs and assets under the control and in the possession of the *department* by posting a notice on the front door of *the* bank, indicating that *it* is in *the possession of the department. The* notice shall be signed by a majority of the directors in office of *the* bank. Immediately upon the posting of *the* notice by *a* bank, it shall notify the *department of its action.*"

Section 46. Section 5-1104, R.C.M. 1947, is amended to read as follows:

"**5-1104. Effect of posting notice.** The posting of *the* notice by the directors of *a* bank, or of a like notice by the *department is* sufficient to place all assets and property of *the* bank, of whatever nature and wherever *located*, in possession of the *department*, and *operates* as a bar to *an attachment* or other legal proceedings against *the* bank or its assets. *No* valid lien or claim can be acquired or created, or transfer or assignment made in any manner, binding or affecting any of the assets of *the* bank after the posting of *the* notice or after taking possession of *a* bank by the *department* without *its* consent."

Section 47. Section 5-1105, R.C.M. 1947, is amended to read as follows:

"**5-1105. Taking possession of bank — notice.** On taking possession of the assets and business of the bank, the *department* shall, in addition to posting notice on the front door of *the* bank, also notify at once, personally or by wire, all corresponding banks, and all persons or corporations known to *it* to be in possession of any of the estate of *the* bank."

Section 48. Section 5-1106, R.C.M. 1947, is amended to read as follows:

"**5-1106. Resumption after closing.** After the *department* has taken possession of *a* bank, *it* may permit *that* bank to resume business upon conditions *which* may be approved by *it.*"

Section 49. Section 5-1107, R.C.M. 1947, is amended to read as follows:

"**5-1107. Powers of department on closing bank — court proceedings.** Upon taking the assets and business of *a* bank into *its* possession, the *department* is authorized to collect all moneys due to *that* bank, and to do *those* other acts necessary to conserve its assets and business, and *the department* shall proceed to liquidate the affairs *of the bank. The department may, in its discretion, and* except as otherwise limited by the

terms of this act, do any acts necessary or desirable for the protection of the property and assets of *the* bank and the speedy and economical liquidation of the assets and affairs of *the* bank and the payment of its creditors, or for the reopening and resumption of business where that is practicable or desirable. *It* may institute, in *its* own name or in the name of the bank, *those* suits and other legal proceedings as *it considers* expedient for *those* purposes. *By applying* to the district court of the county in which *the* bank is located, or to the judge *of that court* in chambers, *the department* may *obtain* an order to sell, compromise, or compound any bad or doubtful debt or claim, and to sell and dispose of any assets, which sale may be made to stockholders, officers, directors, or others interested in *the* bank, on consent of the court. *In the* court proceedings the bank shall be made a party by notice issued on order of the court or judge, in *place* of summons, and served upon some officer of the bank, if there *is any* in the county. *If* no officer can be found in the county then the *notice* shall be posted in three (3) public places in the county for at least ten (10) days before the day of hearing. The hearing of *an* application or petition by the *department* may be had at any time, either in term or vacation in court, or in chambers, as the court may order, after *the* bank has had five (5) days' notice of *the* application, or the notice has *been* posted for at least ten (10) days."

Section 50. Section 5-1108, R.C.M. 1947, is amended to read as follows:

"**5-1108. Recourse of aggrieved bank — application to court for injunction — pleadings — evidence — appeals.** *A* bank aggrieved by the action of *the department* in taking possession of its assets or closing its doors may, within ten (10) days after possession *has* been taken, apply to the district court of the county in which its principal place of business is located, or to the judge *of that court* in chambers, to enjoin further proceedings by the *department. The* court or the judge in chambers, after notifying the *department* to appear at a specified time and place to show cause why further proceedings should not be enjoined, and after hearing the allegations and proofs of the parties, and determining facts, may on the merits dismiss *the* application or enjoin the *department* from further proceeding and direct *it* to surrender the business and assets of *the* bank. *The* application for injunction may be heard at any time after five (5) days' notice from the time of service on *the department,* in the discretion of the court, or at any time prior *to then* by the consent of the *department.* Application shall be made on the verified complaint of the bank, in the form used in civil actions, and a copy of *the* complaint shall be served on the *department* with the order to show cause. The *department* shall, at least two (2) days before the time set for hearing, file *with the court* and serve upon counsel for plaintiff an answer to the complaint, also in the form used in civil actions. *Any* questions raised by motion in other actions may be raised in the answer. On the issues *raised by* the complaint and answer, the court, or the judge at chambers, at the time fixed for showing cause, shall try the matter on the merits by hearing the allegations and proofs of the parties *and shall enter judgment,* as *in* the trial of *other* civil actions. *If* the *department* makes no appearance in the time *allowed,* the court shall enter *its* default and proceed to hear the proofs of the plaintiff as in civil actions under similar circumstances, and enter

judgment accordingly. The judgment entered either after hearing on the merits or by default, *is a* final judgment. *During* the pendency of litigation the *department* shall take *that* action in relation to the assets of *the* bank *which* is necessary to conserve them."

Section 51. Section 5-1109, R.C.M. 1947, is amended to read as follows:

"5-1109. Department may appoint agents — liquidating agents — salaries and expenses. *(1) The department* may retain *those* officers or employees of *the* bank *which it considers* necessary. *It* shall require from the agent appointed by *it* and from *those* assistants *who* have charge of any of the assets of the bank *that* security for the faithful discharge of their duties as *it considers* proper.

(2) The salary of *a* liquidating agent and necessary clerical assistance, and other expenses incurred by *a* liquidating agent, shall be borne equally and ratably by the bank or banks in process of liquidation under *the* agent's charge in proportion to the total amount of resources of each of *the* banks. The funds for *those* expenses shall be raised by assessing each bank in ratio herein set forth and paying *those* expenses direct to the persons entitled *to them*, without depositing any of *the* funds in the state treasury."

Section 52. Section 5-1110, R.C.M. 1947, is amended to read as follows:

"5-1110. Compensation of agents and attorneys. The compensation of the agents, attorneys, expert accountants and other assistants, *appointed by the department*, and all expenses of liquidation and distribution of a bank whose assets and business *have been* taken possession of by the *department*, shall be fixed by the *department*, but subject to *approval* by the judge of the district court of the county in which the bank is located, on notice of *the* bank. *The department* shall, upon written request of *the* district judge, supply semiannual statements showing the condition of *the* bank in process of liquidation. Except in cases of emergency, the compensation paid to attorneys and expert *accountants* shall be fixed and approved before services are rendered. When the compensation *has* been fixed and approved and the services rendered, the *compensation* shall be paid out of the funds of *the* bank in the hands of the *department*, and *are* a proper charge and lien on the assets of *the* bank."

Section 53. Section 5-1111, R.C.M. 1947, is amended to read as follows:

"5-1111. Notice to creditors of insolvent bank. The *department* shall *give* notice by advertisement in a newspaper of general circulation in the town or city in which *the* bank is situated, if there *is* one, and if not, then in *some* other newspaper published in *this* state, *which* the *department* shall designate, once a week for two *(2)* successive weeks. *The notice shall call* on all persons who have claims against *the* bank to present *them* to the *department* or *its* authorized agent at a place to be specified in *the* notice, and to make sworn proof, in form to be fixed by *the department*, within the time specified in *the* notice, not less than ninety *(90)* days from the date of the first publication. A copy of *the* notice shall be mailed to all persons whose names appear as creditors upon the books of the bank."

Section 54. Section 5-1112, R.C.M. 1947, is amended to read as follows:

"5-1112. Claims — allowance and rejection. The *department* shall reject or allow all claims in the whole or in part, and on each claim allowed shall designate the order of its priority. If a claim is rejected or an order of priority allowed lower than that claimed, notice shall be given the claimant personally or by registered mail, and an affidavit of the service of *the* notice, which shall be prima facie evidence *of service, shall be* filed in the office of the *department*. The action of the *department is* final unless an action *is* brought by the claimant against the bank in the *district* court of the county where the bank is located within ninety (90) days after *the* service to fix the amount of the claim and its order of priority or either. An appeal from the *department's* allowance, either as to priority or amount, may also be taken to the district court of *that* county by any party in interest by serving *notice* on the *department*, stating the grounds of objection and filing *it* in *that* court within thirty (30) days after allowance. Within five (5) days after *the* notice, the *department* shall file in the court, and serve on the appellant, a copy of the claim and *its* reasons for allowance. The court shall, after five (5) days' notice of time and place of hearing on the issues *raised*, hear the proof of the parties and enter judgment reversing, affirming or modifying the *department's* action."

Section 55. Section 5-1113, R.C.M. 1947, is amended to read as follows:

"5-1113. Payment of claims. Claims presented to the *department* prior to the expiration of the time fixed in the notice to creditors, and allowed by *it*, shall be paid in the order of priority fixed *in this chapter*. Those filed after *that* expiration and *within* one year *of that expiration are* entitled, after they have been allowed by the *department*, to share in the distribution of the assets of the bank only to the extent of the assets undistributed in the hands of the *department* and available for the payment of claims of their order of priority at the time *the* claims are filed. *As* against other claims of *the* same order of priority, on which dividends have been paid, they *are* entitled to payment in a proportionate amount before further payments are made on *those* other claims. All claims filed after the expiration of one year following the date fixed in the notice to creditors as the time for presentation of claims are not entitled to be allowed or paid unless all other creditors' claims of any kind, except claims of shareholders, based on stock or assessments paid on stock have been fully paid, and a surplus remains in the hands of the *department*, and then only from *that* surplus."

Section 56. Section 5-1114, R.C.M. 1947, is amended to read as follows:

"5-1114. Claims — order of payment — priorities. *(1)* Except as otherwise provided by the Uniform Commercial Code, the order of payment of the debts of a bank liquidated by the *department* shall be as follows:

(a) The expense of liquidation, including compensation of agents, employees, and attorneys;

(b) All funds of any other bank in process of liquidation by the *department* and placed on deposit by the *department;*

(c) All funds held by the bank in trust;

(d) Debts due depositors, holders of cashier's checks, certified checks, drafts on correspondent banks, including protest fees, paid by them on valid checks or drafts presented after closing of the bank, pro rata. All deposit balances of other banks or trust companies, and all deposits of public funds of every kind (except those actually placed on special deposit under the statutes providing therefor), including those of the United States, the state of Montana, and every county, district, municipality, political subdivision, or public corporation of this state, whether secured or unsecured, or whether deposited in violation of law or otherwise, are included within the terms of this *subsection (1)(d)* and take the same priority as debts due any other depositor. All contractual liabilities pro rata. Accrued interest on savings accounts, certificates of deposit, or other interest-bearing contracts, up to the time of the closing *of* the bank, *shall* be considered as part of the debt due.

(e) Interest on the classes of claims *contained in subsections (1)(a) through (1)(d) of this section* without regard to the priority computed from the date of closing of the bank at the rate of seven *percent* (7%) *a year;*

(f) Unliquidated claims for damages and *similar claims*, including claims of stockholders for amounts claimed to have been voluntarily advanced to the bank or paid in by way of special or voluntary or other assessments. *The department* may, in *its* discretion, without regard to the priorities fixed in *subsections (1)(c) through (1)(f)* of this section, or in preference to the payment of any claims of creditors within these *subsections*, pay off and discharge any lien, claim, or charge against the assets or property of the bank in *its* hands and pay *those* sums *it considers* necessary for the preservation, maintenance, conservation, and protection of *those* assets and property, and likewise property on which the bank has liens by mortgage or otherwise. *It* may also in *its* discretion create a fund or retain in *its* hands, in preference to the claim of any creditors in *subsections (1)(c) through (1)(f)*, moneys for *those* purposes.

(2) Collateral which *has* been put up or pledged as security for the payment of bills payable by *a* bank, or loans or discounts which have been outstanding as rediscounts of *a* bank prior to the closing *of it, is* not available to the other creditors of *the* bank in whole or in part until *the* bills payable or rediscounts have been retired, after which offsets as *provided* in this section shall be allowed.

(3) Deposits of *a* person, firm, or corporation in a bank which is in the possession of the *department* may be offset against any indebtedness, (subject to the conditions of *subsection (2)* of this section), except assessments on stock, due to *the* bank from *that* person, firm, or corporation. All dividends when declared in favor of *a* creditor of the bank may be applied, in the discretion of the *department*, in satisfaction of the indebtedness, if any, due the bank from *the* creditor."

Section 57. Section 5-1115, R.C.M. 1947, is amended to read as follows:

"**5-1115. Claims — partial payments.** The *department* need not await the expiration of the time allowed for filing claims, as fixed in the notice to the creditors, for the payment of dividends. *It* may, in *its* discretion, and if under the circumstances of the particular case *it considers* it expedient and safe, at any time after taking possession of *the* bank and prior to the expiration of *the* period fixed for filing of claims, if *it has* on hand in cash sufficient funds over and above the expenses of liquidation, make *pro rata* distribution to any class of creditors next entitled *to distribution*, in the order of priority fixed *in this chapter*, making *that* payment to *the* creditors as they appear on the books and records of the bank and determining the priority and basing his apportionment on the amount shown to be due by *the* books and records. At any time after the expiration of the date fixed for the presentation of claims against *the* bank and from time to time thereafter, when, in *its* discretion there are sufficient funds available, the *department* shall, after making proper provisions for the payment of expenses of liquidation, declare and pay dividends to all creditors of *the* bank pro rata in the order of their priority. If, after the time fixed for presentation of claims against the bank has expired, it appears that *a* person, prior to the expiration of *the* period, or at any other time, has been paid more than the prorata amount due him as compared with the amounts then paid other creditors, nothing more *may* be paid *that creditor* until the payment made other creditors *places* them on equal footing. In calculating dividends, all disputed claims and deposits shall be taken into account and the amount of dividends upon *the* disputed claims or deposits shall be held by the *department* until the validity of *those* claims or deposits *has* been finally determined. Claims against *a* bank in process of liquidation may be assigned in whole or in part subject to the approval of the *department*. Assignments of claims *are* binding upon the *department* only after *they* have been filed and allowed by the *department*, and only then subject to the payment of the assignor's liabilities to the bank. *An* assignment shall be made by filing written notice, signed by the original claimant, with the *department* or person in charge of *the* bank. No assigned claims may be offset against obligations due the bank. A check or draft drawn against *a* bank closed or taken possession of by the *department*, whether issued before or after closing, shall not be recognized as a claim against *the* bank, or as an assignment of any amount, whether protested or not protested."

Section 58. Section 5-1116, R.C.M. 1947, is amended to read as follows:

"**5-1116. Deposit of funds in department's hands.** All funds in the hands of the *department* belonging to *a* bank in process of liquidation shall be deposited in *the department's* name in *those* banks within the state *which* may be selected and designated by *it* and subject to *its* checks. *Those* funds *are* to be preferred and protected as *provided* in this act."

Section 59. Section 5-1117, R.C.M. 1947, is amended to read as follows:

"5-1117. Disposition of unclaimed funds. *(1)* The *department* shall certify to the *state* treasurer *a* complete list of funds remaining *with it* uncalled for, which have been left *with it* in *its* official capacity, in trust for depositors in and creditors of *a* liquidated bank after they have been held by *it* for six *(6)* months from the date of the final liquidation of the institution. Along with this certificate, *it* shall transmit to the *state* treasurer the funds with accumulated interest *on them*, which *it* has so held in trust for six *(6)* months. A copy of *the* certificate shall also be filed with the state auditor, who shall make a record *of it*.

(2) The state treasurer shall deposit *the* funds and interest in the general fund of *this* state.

(3) A depositor or creditor of a liquidated bank who has not been paid the amount standing to his credit as thus certified to the state treasurer, may apply to the state board of examiners for the amount due him. The depositor or creditor shall make an affidavit and offer proof of his identity and of the amount due him by the liquidated bank. When satisfied as to the correctness of the claim and of the identity of the person, the state board of examiners shall forward it to the auditor, who shall audit the *claim* and if found correct so certify to the state board of examiners, *which*, if *it approves the claim*, shall transmit *the claim* to the *legislature* with a statement of *its* approval."

Section 60. Section 5-1118, R.C.M. 1947, is amended to read as follows:

"5-1118. Disposition of assets remaining after payment of claims. *(1) When* the *department* has paid to each depositor and creditor of *the* bank whose claims have been approved and allowed as provided *in this chapter*, the amount due *on them*, or made satisfactory adjustment *of them*, and *has* made provisions for unclaimed and unpaid deposits and disputed claims and deposits, and *has* paid all the expenses of liquidation, *it* shall file with the clerk of the district court of the county in which the bank is located, a report of *its* administration of *the* trust. If there *are* remaining assets on hand the *department* may apply to the judge of *that* court in open court or in chambers, for an order authorizing *it* to surrender the remaining assets together with all the stationery, correspondence, books and records, kept by the bank while it was a going concern to the directors of *the* bank in office at the time of closing *it*, as trustees for stockholders, or to *that* other person, if any, designated as trustee by a majority of the stockholders. The report and petition shall be set for hearing upon notice *which* the court may direct. *Upon* hearing and approval of *the* report and account and the surrender of *the* assets as directed, the *department is* discharged from all further liability or responsibility in connection with the assets and affairs of *the* bank. The court may, if requested, require *the* trustees to give bond in *an* amount the court may fix, conditioned for the faithful performance of their duties. *The* trustee or trustees *shall* complete the liquidation of any remaining assets *and may* sell and dispose of real and personal property as rapidly as *possible* and *shall* distribute the proceeds among the stockholders as their rights may appear, or dispose of the *proceeds* in *some* other manner as the stockholders shall by majority action, direct. *The* court may upon request of a majority of the stockholders order the *department* to close up the trust as provided in *subsection (2)* of this section.

(2) If the assets of *the* bank *are* insufficient for making payments in full to the depositors and creditors of *the* bank, then, *when* the *department* has liquidated all available assets and disbursed *them* as provided by law, the *department* shall file with the clerk of court of the county in which the bank is located, a final report of *its* liquidation of *the* bank. Upon notice *which* the court may order, the report shall be set for hearing before the court and if found correct and all funds accounted for, the court shall approve *it*. The *department* may at the same time and in the report make application to the district court of the county in which *the* bank is located, for an order directing the closing of the trust and upon entry of the order closing the trust the *department is* discharged from all further liability or responsibility in connection with the assets and affairs of *the* bank. *The* charter of *the* bank shall be forfeited and all the stationery, correspondence, books, and records kept by the bank while it was a going concern, and *considered* by the *department* to be of no value, may be destroyed. *However,* no correspondence or records *may* be destroyed *until* ten *(10)* years *after* the date the bank ceased to be a going concern.

(3) On application for orders, as provided *in this section*, the bank shall be made a party by notice issued on order of the court or judge and served in *a* manner the court *directs* and applications authorized by this section may be *heard* at any time in court or in chambers, as the court may order, *upon* not less than five (5) days' posted *or* served notice of the hearing."

Section 61. Section 5-1123, R.C.M. 1947, is amended to read as follows:

"5-1123. Punishment. When no other punishment is provided, *a* person willfully or knowingly violating this act, *is* guilty of a misdemeanor. The attorney general upon information furnished by the *department*, shall *sue* to enforce this act."

Section 62. Section 5-1126, R.C.M. 1947, is amended to read as follows:

"5-1126. Power of closed banks to borrow money from governmental agencies. Notwithstanding any other law, the liquidating agents of closed banks *may* borrow money from *an* agency *of the federal government* on behalf of commercial banks, savings banks, trust companies and investment companies closed and in liquidation and, as security *for the loan may* pledge or mortgage the assets and properties thereof, for the purpose of paying depositors or creditors in part or in full, after *applying* to and obtaining the approval of the *department* and the district court of the county in which *the* bank, *or* trust or investment company is located, upon *the* court proceedings prescribed in section 5-1107."

Section 63. Section 5-1129, R.C.M. 1947, is amended to read as follows:

"5-1129. Manner of issuing preferred stock. *The* preferred stock may be issued and sold upon terms and conditions approved by the *department*, or required for the purchase of *the* stock by *an* agency or quasi-agency of the federal government."

Section 64. Section 5-1202, R.C.M. 1947, is amended to read as follows:

"**5-1202. Banking institutions may take advantage of federal deposit insurance corporation aid.** *A* banking institution *may*, on the authority of its board of directors, or a majority thereof, enter into *those* contracts, incur *those* obligations and generally perform any acts necessary or appropriate in order to take advantage of any memberships, loans, subscriptions, contracts, grants, *rights*, or privileges, available to banking institutions or to their depositors, creditors, stockholders, conservators, or liquidators, by virtue of those provisions of the Federal *Deposit Insurance* Act, which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits, or of any other act or resolution of Congress to aid, regulate, or safeguard banking institutions and their depositors. *A banking institution may also* subscribe for and acquire stock, debentures, bonds, or other types of securities of the Federal Deposit Insurance Corporation, and *may* comply with the lawful *rules* and requirements from time to time *adopted* by *that* corporation."

Section 65. Section 5-1203, R.C.M. 1947, is amended to read as follows:

"**5-1203. Appointment of the corporation as agent.** *If a* banking institution, the deposits in which are in any extent insured by the Federal Deposit Insurance Corporation created by the Federal *Deposit Insurance* Act, *12 U.S.C. sections 1811-1831,* is closed on account of inability to meet the demands of its creditors, the *department of business regulation* may appoint *the* corporation agent, without bond, to assist *it* or act for *it* in the liquidation of *that* banking institution."

Section 66. Section 5-1205, R.C.M. 1947, is amended to read as follows:

"**5-1205. Examinations by the corporation may be accepted — effect of act.** *(1)* The *department may* accept, in *its* discretion, in *place* of any examination authorized by the laws of this state to be conducted by *the* department of a banking institution, the examination made of *it* within a reasonable period by the Federal Deposit Insurance Corporation, *if* a signed copy of *the* examination is furnished to *the department. The department* may, also in *its* discretion, accept *a* report relative to the condition of a banking institution obtained by *the* corporation within a reasonable period, in *place* of a report authorized by the laws of this state to be required of *the* institution by *the* department, *if* a copy of *the* report is furnished to *the department. The department* may in *its* discretion disclose to *the* corporation, or *an* official or examiner thereof, any information possessed by the *department* with reference to the conditions or affairs of *an* insured institution.

(2) The department may furnish to *the* corporation, or to *an* official or examiner thereof, a copy or copies of any examinations made of *those* banking institutions and of any reports made by *them.*

(3) Nothing in this section *limits* the duty of any banking institution in this state, deposits in which are to any extent insured under the Federal *Deposit Insurance* Act, or any substitution for *it*, to comply with the provisions of *that* act, its substitutions, or the requirements of *that* corporation relative to examinations and reports, nor *limits* the powers of the *department* with reference to examinations and reports under existing law."

Section 67. Section 5-1206, R.C.M. 1947, is amended to read as follows:

"**5-1206. Closed banking institutions may borrow from the corporation.** *If a* banking institution is closed on account of inability to meet the demands of its depositors or by action of the *department* or by action of its directors or in the event of its insolvency or suspension, the *department* or *its* agent, with the permission of the court having jurisdiction, may borrow from *the* corporation and furnish any of the assets of *the* institution to *the* corporation as security for a loan from *it. The department* upon the order of a *district* court of competent jurisdiction may sell to *the* corporation any part or all of the assets of *the* institution. The provisions of this section *do* not limit the power of *a* banking institution, or the *department* to pledge or sell assets in accordance with any existing law."

Section 68. Section 5-1401, R.C.M. 1947, is amended to read as follows:

"**5-1401. Common trust fund authorized.** *A* bank or trust company qualified to act as fiduciary in this state may establish common trust funds for the purpose of furnishing investments to itself as fiduciary, or itself and others, as co-fiduciaries. *It* may, as *that* fiduciary or co-fiduciary, invest funds which it lawfully holds for investment in interests in *the* common trust fund, if *the* investment is not prohibited by the instrument, judgment, decree, or order creating *the* fiduciary relationship, and if in the case of co-fiduciaries, the bank or trust company procures the consent of its co-fiduciary or co-fiduciaries to *the* investment. *A* bank or trust company qualified to act as fiduciary in this state, which is not a member of the federal reserve system, shall, in operation of *the* common trust fund, comply with the rules *adopted* by the *department of business regulation,* and *the department may adopt* rules *it considers* necessary and proper in the premises."

Section 69. Section 7-101, R.C.M. 1947, is amended to read as follows:

"**7-101. Purpose — definition.** A corporation mutually operated for the purpose of encouraging home ownership and thrift among its members and making substantially all of its loans to them on real estate mortgage security, shall be known in this act as a building and loan association or a savings and loan association, and *is* under the supervision of the *department of business regulation, which* shall enforce all laws with respect *to it.* The members of a building and loan association *are* its shareholders, stockholders, borrowers or purchasers of real estate under contract. *The* associations have continual succession and shall be organized under the provisions of this *chapter. When used* in this *chapter,* "building and loan association" *includes* savings and loan associations organized under this act. *"Department" means the department of business regulation provided for in Title 82A, chapter 4."*

Section 70. Section 7-106, R.C.M. 1947, is amended to read as follows:

"**7-106. Capital stock requirements — investigation — certificate of incorporation, how issued.** The capital stock named in the articles

of incorporation *refers* to the authorized capital stock. *The* organization may be completed and business commenced when five per cent *(5%) of the capital stock* is subscribed and not less than twenty-five hundred dollars *($2,500)*, paid in, in cash. *That* amount must thereafter be maintained. *When the* articles of incorporation are in *proper* form and regularly executed and the bylaws have been duly approved as required *in section 7-105* and it *appears* to the satisfaction of the *department* that five per cent *(5%)* of the authorized capital has actually been paid in cash upon the subscription of shares, the *department* shall *then* ascertain from the best sources of information at *its* command the responsibility, character and general fitness of the incorporators. *The department shall also determine whether* there is a reasonable need for the existence of *the* association, and *whether* the public convenience and advantage will be promoted *by its existence.* If the *department is* not satisfied with the result of *its* investigations of the matters specified *in this section, it* shall, within sixty days (60) after *the* articles of incorporation and bylaws have been presented to *it*, refuse to issue the certificate described *in this section.* If *it is* satisfied with the result of *its* investigations, *it* shall within sixty days (60) after *the* articles of incorporation and bylaws have been presented to *it*, issue under *its* official seal, a certificate reciting in substance the filing in *its* office of the articles of incorporation and bylaws. *The certificate shall also state* that *the* articles and bylaws conform to all the requirements of this act; that *the department* has approved *them* and that *it* believes that the incorporators are fit and proper persons to conduct the business of a building and loan association as defined in this act and *the* bylaws and that there is a reasonable need for the existence of *the* building and loan association, and that the public convenience and advantage will be promoted thereby. *The* certificate shall be made in quadruplicate and attached to each copy of the articles of incorporation, one *(1)* of which shall be retained by the *department*, the other three *(3)* shall be returned to the incorporators who shall *immediately* file one *(1)* copy *with* the secretary of state *and* one *(1) with* the clerk and recorder of the county in which the principal place of business of *the* association is located. *The* other *copy* shall be retained by the association. Immediately upon the receipt of *the* certified copy, the secretary of state shall issue a certificate of incorporation, *at which time* the incorporation of *the* association *is* complete."

Section 71. Section 7-108, R.C.M. 1947, is amended to read as follows:

"7-108. Department to approve contracts paying income to person other than association — penalty for not securing. No fiscal agency or promotion contract or any other contract or arrangement whereby the membership fee, or any other income properly payable to the association, or any part thereof, *is* payable to an agent or other contracting party or otherwise than to the association, or whereby any part of the business of *the* association or the management or conduct of its affairs or the expense *of them* is contracted to another, *may* be entered into or allowed until *it* has been submitted to the *department* and by *it* approved in writing. *That* contract *may not* be extended without *the department's* approval. *The* contract, or the extension of *the* contract, not first approved *is* void. *A* person operating under *the* contract or extension, not first approved, or taking or receiving income properly payable to the association without approval, *is* guilty of a misdemeanor."

Section 72. Section 7-113, R.C.M. 1947, is amended to read as follows:

"7-113. Powers and duties of building and loan associations. *A* building and loan association *may*:

(1) *Have* continual succession, by its corporate name;

(2) *Sue* and be sued, in any court;

(3) *Make* and use a common seal and alter *it* at pleasure;

(4) *Appoint those* officers or agents the business of the corporation *requires*, and *pay* them suitable compensation;

(5) *Enter* into obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.

(6) *Issue* stock to members on *the* terms and conditions the constitution and bylaws provide, but *an* association *may not* issue preferred stock.

(7) *Assess* and collect from members dues on stock and interest on loans at the times and in the amount provided for in the constitution and bylaws. The combined total of the amounts paid to an association for interest, commission, bonus, discount and other similar charges, less a proper deduction for all dividends, refunds, and cash credits of all kinds, shall not create an actual net cost to the borrower in excess of the maximum lawful contract rate of interest in this state. Interest not exceeding the maximum lawful contract rate may also be charged on unpaid interest payments from the time *those* interest payments are due. Interest, not exceeding the lawful contract rate, may also be charged and collected on delinquent stock payments when *those* unpaid payments are credited with dividends. *The* interest shall in no event be at a rate exceeding the rate *percent* of the dividend declared on the same unpaid stock payments. *An* association *may not* charge or collect from *a* stockholder, member or borrower, any fines, premiums, or penalties of any kind. *An* officer, agent or employee of *an* association collecting or attempting to collect *a* penalty, fine or premium of any kind or interest at a rate higher than provided in the note or other evidence of debt and in this act, *is* guilty of a misdemeanor.

(8) *Permit* members to withdraw all or part of their stock credits at *the* times and upon *the* terms, as the constitution and bylaws may provide. *No* charge or fee, except as provided *in this section, may* be made against *a* member who withdraws his stock, after having given thirty (30) days' notice of *the* withdrawal. *No* fine of any description *may* be made upon the par value of *that* stock or upon the declared dividends because of *the* withdrawal. *A* member who withdraws his stock or whose stock is matured, *is* entitled to receive all dues paid in and all dividends declared less interest, if any, as provided in subsection (7), less a reasonable membership fee not exceeding two (2) *percent* of the par value of each share of stock and less a *pro rata* share of all losses, if any, which have occurred. *No* other fine or assessments *may* be made against *the* stock. Applications for withdrawal *shall* be registered on the books of the association in the order received and one-half of all cash collections, not required to meet outstanding contracts, must be used for the payment of

the matured stock and of the withdrawals in the order registered. *The* other half of *those* collections each month may be used for the payment of withdrawals other than in the order registered, but no member *may* receive more than one hundred dollars *($100)* in any one month other than by payment of an application for withdrawal in the order registered. The term "outstanding contracts" includes the costs and expenses of operation, completion of loans, payment of taxes and assessments and necessary remodeling and repairs on properties owned by or mortgaged to the association, repayment of all borrowed money and all fixed charges.

(9) *Cancel* shares of stock upon which all credits have been withdrawn, or upon which loans have been canceled or stock upon which no payments have been made for a period of six (6) months, by returning to the stockholders all credits, if any, and reissue *the* shares as new stock.

(10) *Issue* stock to minors and permit *it* to be withdrawn as other stock, and the receipt *by the* minor *is* a valid acquittance if his rights have been fully secured to him.

(11) *Acquire*, hold, encumber and convey *that* real estate and personal property necessary for the transaction of its business, or necessary to enforce or protect its securities. *Not* over ten (10) per cent of the assets of *an* association *may* be invested in home office buildings, furniture, and fixtures. *Other* real property acquired in any manner or for any purpose *may* not be held for more than five (5) years, except by permission of the *department*.

(12) *Borrow* money, only when necessary not exceeding twenty (20) *percent* of its assets except when borrowing from the federal home loan bank as provided *in this section*, and issue its promissory note *for the loan. The* assets and securities of an association *may* not be pledged to secure its borrowed money or for any other purpose, without the consent of the *department*. However, if the *department* determines that it is advisable to pledge assets in order that funds may be secured *it* may authorize *the* pledging. *The* margin of security pledged *may not* exceed twenty-five (25) *percent* of the funds so borrowed except when funds are borrowed from the federal home loan bank. *An* association may borrow money from the federal home loan bank upon *the* terms required by the federal home loan bank, and *may* execute the promissory note of the corporation *for the loan*, and *may* pledge any of the assets of the corporation to secure the repayment of *the* loan, with interest, in accordance with the Federal Home Loan Bank Act, and the rules adopted *under it*.

(13) *Make* loans to members on the security of the shares of the association, and also on their notes secured by first mortgages on improved real estate, including suburban homes, but not on farm lands or mining property, for not to exceed seventy-five (75) *percent* of the actual value of *the* real estate, and upon *the* terms and conditions *which* may be provided in the constitution and bylaws. *However*, where the promissory note, or other written evidence of the loan made by *a* building and loan association *requires* the payment of *the* loan, or total aggregate sum of principal and interest in periodic installments, *the* promissory note, or other written evidence of debt shall specifically state the actual interest rate charged the borrower upon the unpaid balance of the principal amount at each

periodic payment. *When* the note or other evidence of debt does not require the payment of *the* loan in periodic installments, the note or other evidence of debt shall specifically state the actual rate of interest charged the borrower.

(14) Cancel those loans and release the securities on those terms the board of directors may provide. A borrower may have his loan canceled by paying all the interest up to date of cancellation and the sum actually borrowed, less payments on principal, dues paid in, *and* the dividends credited.

(15) *Invest* the money of the association in:

(a) The bonds and securities of the United States, bonds and other obligations guaranteed as to interest and principal by the United States, and the stocks, bonds, debentures, and other securities and obligations of any federal home loan bank created under the laws of the United States;

(b) The bonds and warrants of any state and of any county, city, or school district of the state of Montana;

(c) The obligations of the federal savings and loan insurance corporation lawfully issued pursuant to Title IV of the National Housing Act;

(d) Improved real estate which has been sold under contract, including suburban homes, but not including farm lands or mining property. *However*, the total amount remaining so invested, excluding real estate otherwise acquired, shall at no time exceed fifteen per cent *(15%)* of its assets. *The* amount so invested *may not* exceed eighty-five per cent *(85%)* of the price stipulated in the contract of sale or eighty-five per cent *(85%)* of the value of the property so purchased, whichever is the lesser;

(e) Not to exceed ten per cent *(10%)* of the association assets in other bonds and securities.

(16) *Loan* money to other building and loan associations;

(17) *Make a* semiannual distribution of all the earnings after payment of expenses and setting aside a sum for the contingent funds as provided *in this act*;

(18) *Amend* its articles of incorporation by changing the name, place of business, the number of directors, *and* increase or decrease the capital stock and provide for its own continual succession by a majority vote of its directors. *However, those* amendments *are of no effect* until approved by the *department*;

(19) *Dissolve* the corporation in accordance with the provisions of this chapter;

(20) *Provide* by constitution and bylaws, adopted or amended, by its board of directors for the proper exercise of the powers granted *in this section* and the conduct and management of its affairs;

(21) *Exercise those* other powers *which* are necessary and proper to enable *the* corporation to carry out the purpose of its organization."

Section 73. There is a new R.C.M. section numbered 7-113.2 that reads as follows:

7-113.2. Consolidation and transfer. Two (2) or more building and loan associations, with the approval of the department, may consolidate and become incorporated in one (1) body, with or without any dissolution or division of the funds or property of any of them, or any association may transfer its engagements, funds, and property to any other association upon terms agreed upon by a majority vote of the respective board of directors, and ratified by a two-thirds (⅔) vote of the shares present and voting in person or by proxy at a special meeting or meetings of the stockholders of the respective associations convened for that purpose, upon notice given as provided by law, the notice to state the object of the meeting. A transfer may not prejudice any right of any creditor of the association.

Section 74. Section 7-118, R.C.M. 1947, is amended to read as follows:

"**7-118. Bonds of officers, agents and employees.** *The* board of directors of every building and loan association *shall* require that all officers, agents, and employees of building and loan associations whose duty includes the handling of moneys, notes, bonds, credits, and cash items, and whose duties include bookkeeping or the making of entries in relation to the business of the building and loan association and its customers, be bonded. The board of directors shall by *an* order entered upon the minute books of the board designate all the officers, agents, and employees to be so bonded and the amount of bonds to be given by each. *The* action as to the personnel and amount and the surety company or sureties *shall* be subject to approval by the *department. The* bonds *shall* be in *a* form *which* shall be provided and approved by the *department, and* the bonds *shall* be approved by the president of the building and loan association and his action reported to the board of directors. *All* bonds required by this section *shall* be kept in the custody of the building and loan association subject to inspection by the *department. As* far as possible, *a bond may* not be placed in the custody of the officer, agent, or employee for whom *it* is given."

Section 75. Section 7-119, R.C.M. 1947, is amended to read as follows:

"**7-119. Employment of agents — licenses and revocation thereof.** *(1)* It *is* unlawful for *a* building and loan association doing business *in this* state to employ *an* agent for the purpose of soliciting loans or the sale of stock in *that* association, unless he *is* first licensed by the *department. An* agent representing *an* association, foreign or domestic, doing business *in this* state *may not* solicit loans or the sale of stock of any association unless he *is* first licensed by the *department.*

(2) A license *may not* be issued to *an* applicant for an agent's license until *the* applicant *has* first filed *with* the *department* a written request from the building and loan association desiring to employ him as agent and has filed an application upon a form prescribed and furnished by the *department. The application* must show the applicant's name, business and residence address, community or district in which he wishes to act as agent, the name of the company to be represented, his occupation for the last twelve *(12)* months and other information the *department* may require. If the *department* is satisfied that the applicant is a fit and proper person to engage in the solicitation of loans or the sale of stock *it* shall issue the license. The *department* upon ten (10) days' notice to *an* agent, and *after a* hearing, may revoke the license of *an* agent upon the following grounds:

(a) Misrepresentation;

(b) Conviction in any court for violation of the criminal statutes;

(c) Evidence sufficient to convince the department that *the* agent is not a fit and proper person to *sell* building and loan association stock;

(3) The department shall revoke the license of *an* agent upon the request of *the* association employing *the* agent.

(4) Each license provided for in this *section expires* on December *31* of each year, and for issuance or renewal the *department* shall require a fee of two dollars *($2).*"

Section 76. Section 7-122, R.C.M. 1947, is renumbered 84-7001, and is amended to read as follows:

"**84-7001. Taxation of associations.** *(1)* Every *building and loan or savings and loan* association *subject to regulation under Title 7, chapter 1, R.C.M. 1947,* shall be assessed for and pay taxes upon all real and personal property owned by *the* association, and also upon the moneyed capital employed in *the* business. *The* moneyed capital *shall* be ascertained by deducting from the amount of bonds, notes and other evidences of indebtedness, including evidences of indebtedness secured by mortgage on real estate or personal property, of *the* associations, the amount standing to the credit of the members of *an* association, upon its books, and any indebtedness representing money borrowed for use as moneyed capital. *The* moneyed capital as so ascertained shall be taxed at the same rate and take the same classification as shares of stock in a national bank or moneyed capital coming into substantial competition therewith. The secretary of *an* association shall furnish to the department of revenue or its agent in the county in which the principal office of *the* association is located, within five (5) days after demand, a condensed statement verified by his oath, of the resources and liabilities of *the* association as disclosed by its books, at *12* noon on the first Monday of March in each year. *If the* secretary *fails* to make the statement hereby required, the department or its agent shall *immediately* obtain *the* information from any other available source, and for this purpose he shall have access to the books of *the* association. The department or its agent shall thereupon make an assessment of the real estate and personal property owned by *the* association, and of the moneyed capital employed in the business of *the* association, which assessment shall be as fair and equitable as he may be able to make from the best information available, or *the* assessor may, for the purpose of *the* assessment, adopt the figures disclosed by any prior report made by *the* association to any state or federal officer *under a* state or federal law. *A* person required by this section to make the statement provided *for in this section,* who *fails* to furnish *it, is* guilty of a misdemeanor.

(2) The amount standing to the credit of each member of *an* association, upon its books, shall be considered and held as the individual credit

of each member, and each member shall list the shares held by him for taxation, at their real value in money, in the county of his residence, the same as other credits are listed, except shares from which loans have been made, or money advanced, by the association, and as to such shares they shall be listed for taxation at the net cash value of the stock, to be ascertained by deducting the loan from the cash value of the shares. Associations organized under or controlled by *Title 7, chapter 1, are* subject to taxation in no other way."

Section 77. Section 7-125, R.C.M. 1947, is amended to read as follows:

"**7-125. Duties of department.** The *department* shall examine all building and loan associations doing business in this state at least once a year. Also, *when the holders of* ten per cent (10%) of the subscribed stock of *an* association *file* a written application with the *department*, requesting *it* to make a special examination of *an* association, *it* shall make *the* examination *immediately. The* expense of the examiner making *the* examination shall be paid by the association examined, and the examiner's finding *shall* be available to the petitioners and the board of directors of the association notwithstanding any provisions to the contrary contained in this act."

Section 78. Section 7-126, R.C.M. 1947, is amended to read as follows:

"**7-126. Powers of department.** *The department may* prescribe and supervise *a* uniform system of reports, and accounting for all associations. *The department* shall have access to and may compel the production of all books, papers, securities and moneys of any association under examination. *It may* administer oaths to and examine the officers and agents of *the* association and its affairs."

Section 79. Section 7-127, R.C.M. 1947, is amended to read as follows:

"**7-127. Reports of condition — contents — publication.** *A* building and loan association shall make to the *department* a report of condition *when* requested to do so by the *department*, according to the form which may be prescribed by *the department. The report shall be* verified by the oath or affirmation of the president, vice-president, or secretary of *the* association, and attested by the signature of at least two *(2)* of the directors. *The* report shall exhibit in detail and under appropriate heads, the resources and liabilities of the association at the close of business on any past day specified; and shall be transmitted to the *department* within five (5) days after the receipt of a request or requisition *for it* from *the department* and in *a* form *which* may be required by the *department. It* shall be published as soon as possible in a newspaper in the place where *the* association is established, or if there *is* no newspaper published in the place, then in one published nearest thereto in the same county, at the expense of the association. *Proof* of publication shall be furnished at *the* times and in *the* manner *which* may be required by the *department.*"

Section 80. Section 7-131, R.C.M. 1947, is amended to read as follows:

"**7-131. Foreign associations — requirements.** *(1) An* association as defined in section *7-130* organized under the laws of any *other* state, of the United States, or of any foreign government shall, before doing business *in* this state, file *with* the secretary of state and the *department*, a duly authenticated copy of their charter, articles of incorporation, or articles of agreement, and also a statement, verified by oath of the president and secretary of *the* corporation or managing officials if other than a corporation, and duly verified, showing:

(a) The name of *the* association and the location of its principal office or place of business *outside* this state; and the location of the place of business or principal office *in* this state;

(b) The names and residences of the officers, trustees or directors;

(c) The amount of capital stock;

(d) The amount of capital invested in the state of Montana.

(2) The association shall also file, at the same time and in the same offices, a certificate, *signed by* its president, vice-president, or other acting head, and *by* its secretary if there *is* one, certifying that the association has consented to all the license laws and other laws of *this* state relative to foreign associations and has consented to be sued in the courts of this state, upon all causes of action arising against it in this state, and that service of process may be made upon a citizen of this state, whose name and place of residence shall be designated in *the* certificate. *Service of process on that* agent *is* valid service on the association."

Section 81. Section 7-136, R.C.M. 1947, is amended to read as follows:

"**7-136. Conformity required.** The powers, rights, duties, privileges, and obligations of every association organized and doing business in *a* form similar to that authorized by this act, shall be governed, controlled, construed, extended, limited, and determined by the provisions of this act, to the same extent and effect as if *the* association had been organized and incorporated under or pursuant to its provisions, and the articles of incorporation, bylaws and rules of each heretofore made or existing are hereby modified, altered and amended to conform with the provisions of this act and the same are declared void where *the* articles of incorporation, bylaws or rules are inconsistent with its provisions; except that the obligations of any existing association, whether between *the* association and its shareholders or any one of them, or any other person or persons, or any valid contract between the shareholders of the association existing at the time this act takes effect, shall not be in any way impaired by the provisions of this act; and with *these* exceptions every building and loan association shall possess the powers, rights, duties and privileges, and be subject to the obligations, restrictions and liabilities conferred and imposed by this act, notwithstanding anything to the contrary in its articles of incorporation, bylaws or rules. All obligations to *the* association heretofore contracted shall be enforceable by it and in its name and demands, claims and rights of action against *the* association shall be enforced against it as fully and completely as they might have been enforced before. Except as above set forth, on and after six months after the passage and approval of this act, no domestic or foreign association now engaged in the business of a building and loan association, or a business of like character, shall be permitted to conduct *that* business in this state unless it *complies* in every respect with the provisions of this act."

Section 82. Section 7-138, R.C.M. 1947, is amended to read as follows:

"**7-138. Department report.** The *department* shall preserve in permanent form a full record of *its* proceedings, including a concise statement of each association examined, and *it* shall annually make a report to the governor of the general conduct and condition of the building and loan associations doing business in this state, with *those* suggestions as *it considers* expedient. *The* report shall also include the information contained in the statement required of the association, and arranged in tabulated form."

Section 83. Section 7-139, R.C.M. 1947, is amended to read as follows:

"**7-139. Obtaining property by fraud, false report, refusal to permit inspection of books.** A director, officer, agent, or employee of *a* building and loan association who:

(1) Willfully receives or possesses any of its property, otherwise than in payment for a just demand, and with intent to defraud, omits to make or direct to be made a full and true entry *of it* in its books and accounts;

(2) Concurs in omitting to make *a* material entry thereof;

(3) Willfully makes or concurs in making or publishing *a* written report, exhibit or statement of *the association's* affairs or pecuniary condition, containing any material statement which is false; or

(4) Having the custody or control of *the association's* books, willfully refuses or neglects to make *a* proper entry in the books as required by law, or to exhibit, or allow *them* to be inspected and extracts to be taken *from them* by the *department is* guilty of a felony."

Section 84. Section 7-147, R.C.M. 1947, is amended to read as follows:

"**7-147. Reports and examinations by department confidential.** *(1) An employee or agent of the department, who* fails to keep secret the facts and information obtained in the course of an examination or by reason of his official position, except when the public duty of *that* officer requires him to report upon or take official action regarding the affairs of the association so examined, or willfully makes a false official report as to the conditions of *the* association, shall be removed from office and shall be fined not more than five hundred dollars *($500)*, or imprisoned in the penitentiary not less than two (2) years nor more than five (5) years, or both. Nothing in this section *prevents* the proper exchange of information, relating to building and loan associations and *their* business, with the representatives of building and loan departments of other states, but in no case shall the private business or affairs of *an* individual, association, or company be disclosed. *The department* on request of any federal home loan bank, shall furnish *that* bank any information *it* may have relative to the finances, manner of business, methods of bookkeeping, and any other information relating to *an* association which is a member of, seeking to become a member of, a borrower from, or seeking to become a borrower from, *a* federal home loan bank.

(2) An association, the officers or agents thereof, and the *department* *may* do *anything* necessary to enable *a* building and loan association within this state to become a member of the federal home loan bank of this or any adjoining district so far as may be compatible with the constitution of this state and the laws of the United States."

Section 85. Section 7-149, R.C.M. 1947, is amended to read as follows:

"**7-149. Voluntary liquidation and settlement.** *With* the consent of the *department an* association organized under the laws of and doing business in this state, may, if the stockholders *consider* it advisable, go into liquidation. *For* the purpose of so doing *it* may, at any regular or called meeting of the stockholders, adopt a resolution declaring that *the* association intends to go into liquidation and discontinue business as a building and loan association. A copy of *the* resolution, duly certified by the president and secretary of *the* association, under the seal thereof, shall be transmitted to the *department* within ten (10) days after *its* passage. *The department* shall *then* issue *its* certificate reciting that *the* resolution has been filed in *its* office, and that *the* association is in liquidation. After the filing of *the* notice, it *is unlawful* for *the* association to issue stock, or to loan or advance its money to members or to any other person. *All* of the income and receipts of *the* association, in excess of the actual expense of managing *it*, shall be applied to pay off first the indebtedness and then the stock in *the* association upon which no loans have been made, the same to be paid pro rata. The board of directors of *the* association in liquidation may adopt *those* rules and make *those* orders *which are* just and equitable for the sale and disposition of all property held by *the* association and for the division of the assets of *the* association. *The* association in liquidation *may* be *examined by*, and *shall be* under the supervision of the *department.*"

Section 86. Section 7-150, R.C.M. 1947, is amended to read as follows:

"**7-150. Insolvency or impairment of building and loan association — powers of department.** *When* it *appears* to the *department* that the affairs of *a* building and loan association are in an unsound condition, or that it is conducting its business in an unsafe or unlawful manner, the *department* may take possession of all books, records, and assets of every description of *the* association and retain possession of *them* pending the further proceedings specified *in this section. If* the board of directors, secretary, or person in charge of *the* association *refuses* to permit the *department* to take possession, the *department* shall communicate *that* fact to the attorney general. *The* attorney general *shall* at once institute *the* proceedings necessary to place the *department* in immediate possession of the property of *the* association. Upon taking possession of the effects of the association, the *department* shall prepare a full and true statement of the affairs and condition of *the* association, including an itemized statement of its assets and liabilities and shall receive and collect all debts, dues and claims belonging to it and pay the immediate and reasonable expenses of *the department's* trust. When the condition of *the* association has been fully ascertained and it *appears* that the affairs of *the* association are in fact in an unsound condition the *department* shall at once notify, in writing, the board of directors of *its* decision, giving them twenty (20) days in which to restore the affairs of *the* association to sound condition. Meanwhile, the *department* shall remain in charge

of the books, records, and assets of every description of *the* association, *shall* attend or be represented at all directors and stockholders meetings held, *and shall* suggest *those* steps *it considers* necessary to restore *the* association to a sound condition. *If the association* is not *restored to a sound condition* within twenty (20) days, *the department* shall report the facts to the attorney general. *The* attorney general *shall* institute proceedings in the district court of the county in which *the* association has its principal place of business, for the appointment of the *department* as receiver. *As receiver, the department may* collect all moneys due *the* association and *may* do *those* other acts *which* are necessary to conserve its assets and business, and *it* shall liquidate *the association's* affairs. *The department may,* except as otherwise limited by the terms of this act, do any acts necessary or, in *its* discretion, desirable for the protection of the property and assets of *the* association and the speedy and economical liquidation of its assets and affairs and the payment of its creditors, or for the resumption of business of *the* association where that is practicable or desirable. *The department* may institute in *its* own name as, or in the name of the association, *those* legal proceedings *it considers* expedient for *those* purposes. *By applying* to the district court of the county in which *the* association is located, or to the judge thereof, in chambers, *the department* may, upon sufficient showing of cause, *obtain* an order to sell, compromise or compound any bad or doubtful debt or claim, and to sell any *of* the assets. *The* sale may be made to stockholders, officers, directors, or others interested in *the* association, on consent of the court. On *the* proceedings the association shall be made a party by notice issued on order of the court or judge, in *place* of summons, but served in like manner. *The* hearing of *the* application or petition by the *department* may be had at any time, either in term or vacation in court, or in chambers, as the court may order, after *the* association has had five (5) days' notice of *the* application."

Section 87. Section 15-2614, R.C.M. 1947, is amended to read as follows:

"15-2614. Control — supervision — reports. The corporation *is* subject to the examination of the *department of business regulation,* and shall make reports of its condition not less than annually to *that department, which* in turn shall make copies of *the* reports available to the commissioner of insurance and to the governor. The corporation shall also file an annual statement required by Title 15, *R.C.M.* 1947."

Section 88. Section 27-402, R.C.M. 1947, is amended to read as follows:

"27-402. General purpose. The general purpose of this *chapter* is to protect and promote public welfare and to eliminate unfair and demoralizing trade practices in the milk industry. It is enacted in the exercise of the police powers of the state."

Section 89. Section 27-403, R.C.M. 1947, is amended to read as follows:

"27-403. Definitions. *(1) Unless the context requires otherwise, in this chapter:*

(a) "Board" means the board of milk control provided for in section 82A-406.

(b) "Person" means *a* person, firm, corporation, or co-operative association.

(c) "Producer" means *a* person who produces milk for consumption *in this* state, selling *it* to a distributor.

(d) "Department" means the department of business regulation provided for in Title 82A, chapter 4.

(e) "Distributor" means *a* person purchasing milk from any source, either in bulk or in packages, and distributing *it* for consumption *in this* state. *The* term includes what are commonly known as jobbers and independent contractors. *The* term, however, excludes *a person* purchasing milk from a dealer licensed under this *chapter,* for resale over the counter at retail, or for consumption on the premises.

(f) "Producer-distributor" means *a* person both producing and distributing milk for consumption *in this* state.

(g) "Retailer" means *a* person selling milk in bulk or in packages over the counter at retail, or for consumption on the premises, and includes, but is not limited to, retail stores of all types, restaurants, boarding-houses, fraternities, sororities, confectionaries, public and private schools, including colleges and universities, and both public and private institutions and instrumentalities of all types and description.

(h) "Dealer" means *a* producer, distributor, producer-distributor, jobber, or independent contractor.

(i) "Licensee" means *a* person who holds a license from the *department.*

(j) "Market" means *an* area of the state designated by the *department* as a natural marketing area.

(k) "Consumer" means *a* person or *an* agency, other than a dealer, who purchases milk for consumption or use.

(l) "Producer prices" means those prices at which milk owned by a producer is sold in bulk to a distributor.

(m) "Wholesale prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a retailer.

(n) "Jobber prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a jobber or independent contractor.

(o) "Retail prices" means those prices at which milk owned by a retailer is sold, in bulk or in packages, over the counter at retail, or for consumption on the premises.

(p) "Milk" means the lacteal secretion of a dairy animal or animals, including *those* secretions when raw and when cooled, pasteurized, standardized, or homogenized, recombined, concentrated fresh, or otherwise

processed and all of which is designated as grade A by a duly constituted health authority, and also includes *those* secretions which are in any manner rendered sterile or aseptic, notwithstanding whether they are regulated by any health authority of this or any other state or nation.

(q) Class I milk *includes* all bottled or packaged milk, low fat, buttermilk, chocolate milk, whipping cream, commercial cream, half and half, skim milk, fortified skim milk, skim milk flavored drinks, and any other fluid milk not specifically classified in this *chapter*, whether raw, pasteurized, homogenized, sterile or aseptic.

(r) Class II milk *includes* milk used in the manufacture of ice cream and ice cream mix, ice milk, sherbet, eggnog, cultured sour cream, cottage cheese, condensed milk, and powdered skim for human consumption.

(s) Class III milk *includes* milk used in the manufacture of butter, cheddar cheese, process cheese, livestock feed, powdered skim other than for human consumption, and skim milk dumped.

(2) The *department may* assign *new* milk products, *not expressly included in one of the classes defined in this section,* to the class which in its discretion it determines to be proper."

Section 90. Section 27-405, R.C.M. 1947, is amended to read as follows:

"27-405. General powers of the department. (1) The *department* shall supervise, regulate, and control the milk industry of *this* state, including the production, transportation, processing, storage, distribution and sale of milk in *this* state for consumption *in this* state. *Nothing* in this *chapter abrogates* or *affects* the status, force or operation of any provision of public health laws or the law under which the *department of* livestock is constituted together with the *department of* livestock *rules* or county board of health *rules*, or municipal ordinances for the promotion or protection of the public health. *The department may* co-operate with the *department* of health *and environmental sciences*, the *board of* livestock or any county or city board of health or the department of agriculture in enforcing this *chapter*.

(2) The *department* shall investigate all matters pertaining to the production, transportation, processing, storage, distribution and sale of milk in *this* state and conduct hearings upon any subject pertinent to the administration of this *chapter*. The *department may* subpoena milk dealers, their records, books, and accounts, and any other person from whom information may be desired or *considered* necessary to carry out the purposes and intent of this *chapter*, and may issue commissions to take depositions of witnesses who are sick or absent from the state or who cannot otherwise appear in person before the *department* at its offices. *The department shall give* at least ten (10) *days'* notice to the proposed witness."

Section 91. Section 27-406, R.C.M. 1947, is amended to read as follows:

"27-406. Markets. *(1)* Pursuant to the declaration of policy relating to milk set forth in section 27-401, the *department shall* designate natural marketing areas which shall together embrace all the geographical area of the state and *shall* enforce minimum producer, wholesale, and retail prices *established for those* areas *by the board.*

(2) Natural marketing areas shall be established throughout the state by the *department. Before a* proposed natural marketing area is established the *department*, after notice of at least thirty (30) days, shall hold a hearing or hearings, at a place or places within the proposed area, at which producers and distributors doing business within *the* proposed natural marketing area, who are licensed by the *department of livestock*, and the consuming public may present evidence and testify. *If* the hearing or hearings make it evident to the *department* that the establishment of *the* proposed natural marketing area is in the public interest, the *department* shall establish *the* natural marketing area.

(3) The *department may* from time to time adjust the boundaries of natural marketing areas, if after a hearing upon notice of at least thirty (30) days to all interested parties it finds *the* adjustment to be in the public interest."

Section 92. Section 27-407, R.C.M. 1947, is amended to read as follows:

"27-407. Establishment of minimum prices. *(1)* The board shall fix minimum producer, wholesale, jobber, and retail prices for class I milk, and minimum producer prices only for class II and class III milk in all areas of the state, by adopting rules in a manner prescribed by the Montana Administrative Procedure Act.

(2) The board shall establish such prices by means of flexible formulas which shall be devised so that they bring about such automatic changes in all minimum prices as are justified on the basis of changes in production costs and supply, processing and distribution costs, and retailing costs.

(3) The board shall consider the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and states, so that minimum prices which are fair and equitable to producers, distributors, jobbers, retailers, and consumers may result.

(4) The board shall, when publishing notice of proposed rule making under authority of this section, set forth the specific factors which shall be taken into consideration in establishing the formulas and in particular in determining costs of production and distribution and of the actual dollars and cents costs of production and distribution which preliminary studies and investigations of auditors or accountants in its employment indicate will or should be shown at the hearing, so that all interested parties will have opportunity to be heard and to question or rebut such considerations as a matter of record.

(5) Such specific factors may include, but shall not be limited to, the following items:

(a) Current and prospective supplies of milk in relation to current and prospective demands for such milk for all purposes;

(b) The ability and willingness of consumers to purchase, which shall include among other things, per capita disposable income statistics, consumer price indices, and wholesale price indices;

(c) The cost factors in producing milk, which shall include among other things the prices paid by farmers generally (as used in parity calculations of the United States Department of Agriculture), prices paid by farmers for dairy feed in particular and farm wage rates in this state;

(d) The alternative opportunities, both farm and nonfarm, open to milk producers, which shall include among other things, prices received by farmers for all products other than milk, prices received by farmers for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

(e) The prices of butter-nonfat dry milk, and cheese;

(f) The cost factors in distributing milk, which shall include among other things the prices paid by distributors for equipment of all types required to process and market milk and prevailing wage rates in this state;

(g) The cost factors in jobbing milk, which shall include among other things raw product and ingredient costs, carton or other packaging cost, processing cost and that part of general administrative costs of the supplying distributor which may properly be allocated to the handling of milk to the point at which such milk is at the supplying distributor's dock, equipment of all types required to market milk and prevailing wage rates in the state;

(h) The need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk;

(i) A reasonable return on necessary investment to all ordinarily efficient and economical milk dealers.

(6) If the board at any time proposes to base all or any part of any official order establishing or revising any milk pricing formulas upon facts within its own knowledge, as distinguished from evidence which may be presented to it by the consuming public or the milk industry, the board shall, when publishing notice of proposed rule making under authority of this section, cause notice to be given to the consuming public and the milk industry of the specific facts within its own knowledge which it will consider, so that all interested parties will have opportunity to be heard and to question or rebut such facts as a matter of record.

(7) The board, after consideration of the evidence produced, shall make written findings and conclusions and shall fix by official rule:

(a) The formula whereby minimum producer prices for milk in classes I, II, and III shall be computed.

(b) The formula whereby minimum wholesale prices for milk in class I shall be computed.

(c) The formula whereby minimum jobber prices for milk in class I shall be computed.

(d) The formula whereby minimum retail prices for milk in class I shall be computed.

(8) This section shall not be construed as requiring the board to promulgate any specific number of formulas, but shall be construed liberally so that the board may adopt any reasonable method of expression to accomplish the objective set forth in (a), (b), (c), and (d) above. If the evidence presented to the board at any public hearing for the establishment or revision of milk pricing formulas is found by the board to require the establishment of separate and varying wholesale prices for any particular uses, the board shall designate the reasons therefor and establish such separate formulas.

(9) Each rule establishing or revising any milk pricing formulas shall classify milk by forms, classes, grades or uses as the board may deem advisable and shall specify the minimum prices therefor.

(10) The milk produced in one natural marketing area and sold in another natural marketing area shall be paid for by a distributor or dealer in accordance with the pricing order of the area where produced at the price therein specified of the class or use in which it is ultimately used or sold.

(11) No allowance for freight, other than freight for transportation of milk from the farm to plant, shall be charged to a producer by a distributor or dealer unless it is found and ordered by the board, after notice and hearing in the manner hereinbefore specified, that such an additional freight allowance is necessary to permit the movement of milk in the public interest.

(12) All milk purchased within a natural marketing area by a distributor shall be purchased on a uniform basis. The basis to be used shall be established by the board after the producers and the distributors of the area have been consulted.

(13) The board may amend any official rule in the same manner provided herein for the original establishment of milk pricing formulas; provided, further, the board may in its discretion, when it determines the need exists, notice and hold state-wide public hearings affecting establishment or revision of milk pricing formulas in all market areas of the state.

(14) Upon petition of a distributor or a majority of his producers, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan as a method of payment by that distributor of producer prices; and if the board finds that the evidence adduced at such hearing warrants the establishment of a base or quota plan, the board shall proceed by official order to establish the same.

(15) Upon petition by any producer, producer-distributor or distributor in any marketing area, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for an area-wide or state-wide pooling arrangement as a method of payment of producer prices, provided that at such hearing the board shall among other things specifically receive and consider evidence concerning production and

marketing practices which have historically prevailed in the area concerned or state-wide, as the case may be; and if the board finds that the evidence adduced at such hearing warrants the establishment of such an area-wide or state-wide pooling arrangement, the board shall proceed by official order to establish the same, but such official order shall be of no force or effect until it is approved in a referendum conducted by the board among affected producers, producer-distributors, and distributors.

(16) The requirements hereinabove set forth concerning notices of hearings for the establishment of milk pricing formulas shall apply to any hearings regarding base or quota plans or area-wide or state-wide pooling arrangements, or abandonment thereof."

Section 93. Section 27-408, R.C.M. 1947, is amended to read as follows:

"27-408. Licenses to producers, producer-distributors, distributors and jobbers. In any market, where the provisions of this *chapter* apply, it *is* unlawful for *a* producer, producer-distributor, distributor or jobber to produce, transport, process, store, handle, distribute, buy or sell milk unless *the* dealer *is properly* licensed as provided by this *chapter*. It *is* unlawful for *a* person to buy, sell, handle, process, or distribute milk which he knows or has reason to believe has been previously dealt with or handled in violation of any provision of this *chapter*. The *department* may decline to grant a license, or may suspend or revoke a license already granted, upon due cause and after hearings."

Section 94. Section 27-409, R.C.M. 1947, is amended to read as follows:

"27-409. Licenses — disposition of income. *(1) A* producer, producer-distributor, distributor or jobber *may not* engage in the business of producing or selling milk subject to this *chapter* in this state without first having obtained a license from the *department of* livestock or, in the case of milk entering this state from another state or foreign nation, without complying with the requirements of the Montana Food, Drug and Cosmetic Act, and without being licensed under this *chapter* by the department. The annual fee for *the* license from the department *is* two dollars ($2), *and is* due before July *1*, and shall be deposited by *the* department to the credit of the general fund.

(2) In addition to *the* annual license fee, the *department* shall, in each year, before April *1*, for the purpose of securing funds to administer and enforce this *chapter*, levy an assessment upon producers, producer-distributors, and distributors as follows:

(a) A fee per hundredweight on the total volume of all milk subject to this act produced and sold by a producer-distributor.

(b) A fee per hundredweight on the total volume of all milk subject to this act sold by a producer.

(c) A fee per hundredweight on the total volume of all milk subject to this act sold by a distributor, excepting that which is sold to another distributor.

(3) The department shall adopt rules fixing the amount of each fee. The amounts may not exceed levels sufficient to provide for the administration of this act. The fee assessed on a producer or on a distributor may not be more than one-half (½) the fee assessed on a producer-distributor.

(4) The assessment upon producer-distributors, producers, and distributors shall be paid quarterly before *January 15, April 15, July 15, and* October *15*, of each year. *The* amount of *the* assessment shall be computed by applying the fee designated by the *department* to the volume of milk sold in the *preceding* calendar quarter.

(5) Failure of *a* producer, producer-distributor, or distributor to pay *an* assessment when due *is a* violation of this *chapter* and his license under this *chapter* automatically *terminates* and *is* void. *A* license so terminated shall be *reinstated* by *the department upon* payment of a delinquency fee equal to thirty per cent (30%) of the assessment which was due.

(6) All assessments required *by this chapter* shall be deposited by the department in the earmarked revenue fund. *All* costs of administering this *chapter*, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of this *chapter*, shall be paid out of control board moneys in *that* fund.

(7) The department may, if it finds the costs of administering and enforcing this *chapter* can be derived from lower rates, amend its rules to fix the rates at a less amount on or before the first day of April in any year."

Section 95. Section 27-410, R.C.M. 1947, is amended to read as follows:

"27-410. Application for licenses. An applicant for license to operate as a producer, producer-distributor, distributor, or jobber shall file a signed application upon a blank prepared under authority of the *department*, and an applicant shall state facts concerning his circumstances and the nature of the business to be conducted *which* in the opinion of the *department* are necessary for the administration of this *chapter*. *The* application shall certify the applicant to be the holder of all licenses required by the *department of* livestock for the conduct of his business or, in the case of milk entering this state from another state or foreign nation, compliance with the requirements of the Montana Food, Drug and Cosmetic Act. *The* application shall be accompanied by the license fee required to be paid."

Section 96. Section 27-411, R.C.M. 1947, is amended to read as follows:

"27-411. Declining, suspending and revoking licenses — penalties in lieu of suspension or revocation. (1) The *department* may *refuse* to grant a license or may suspend or revoke a license already granted for due cause upon due notice and after hearing. The violation of any provisions of this *chapter* or of any lawful order or *rule* of the board *or department*, the failure or refusal to make required statements or

reports, *or failure to pay* license or assessment fees *are* causes for which the *department* may, at its discretion, suspend, or revoke a license.

(2) In *place* of suspension or revocation of a license the *department* may assess a civil penalty not to exceed five hundred dollars ($500) per day for each daily failure to comply with or each daily violation of the provisions of this *chapter* or of any lawful order or *rule* of the *department or* board. *If* the person against whom *a* civil penalty is assessed fails to pay *the* civil penalty *immediately*, the *department shall* collect *the* civil penalty by a civil proceeding in the district court of the first judicial district. *This penalty* shall be construed as civil and not criminal in nature. Any moneys received by the *department* as a result of collection of civil penalties shall be paid into the *earmarked revenue fund as provided by section 27-417, R.C.M. 1947.*"

Section 97. Section 27-413, R.C.M. 1947, is amended to read as follows:

"**27-413. Rules and orders.** The *department* may adopt and enforce rules and orders necessary to carry out the provisions of this *chapter and any orders adopted under it by the department or the board. A* rule or order shall be posted for public inspection in the main office of the *department* for thirty (30) days, and a copy *shall be* filed in the office of the *department. A* copy *shall also be* sent by registered letter to the secretary of each area, *except in the case of* an order directed only to a person or persons named *in it*, which shall be served by personal delivery of a copy, or by mailing a copy to each person to whom *the* order is directed, or, in the case of a corporation, to any officer or agent of the corporation upon whom a summons may be served in accordance with *laws of this state. The* posting, in the main office of the *department*, of *a* rule *or* order, not required to be *personally* served as provided *in this section*, and *the* filing in the office of the *department is* sufficient notice to all persons affected by *the* rule or order. A rule or order when *properly* posted and filed or served, as provided in this *section, has* the force of law."

Section 98. Section 27-414, R.C.M. 1947, is amended to read as follows:

"**27-414. Rules of fair trade practices.** *The department may adopt* reasonable rules governing fair trade practices as they pertain to the transaction of business among licensees under this *chapter* and among licensees and the general public. *Those* rules shall contain, but *are* not limited to, provisions *prohibiting* the following methods of doing business which are unfair, unlawful, and not in the public interest:

(1) The payment, allowance, or acceptance of secret rebates, secret refunds, or unearned discounts by *a* person, whether in the form of money or otherwise.

(2) The giving of milk, cream, dairy products, services, or articles of any kind, except to bona fide charities, for the purpose of securing or retaining the fluid milk or fluid cream business of *a* customer.

(3) The extension to certain customers of special prices or services not available to all customers who purchase milk of like quantity under like terms and conditions.

(4) The purchasing, processing, bottling, packaging, transporting, delivering or otherwise handling in any marketing area of milk which is to be or is sold or otherwise disposed of at less than the minimum wholesale and minimum retail prices established by the board.

(5) The payment of a price *lower* than the applicable producer price, established by the board, by a distributor to *a* producer for milk which is distributed to any person, including agencies of the federal, state or local government."

Section 99. Section 27-414.1, R.C.M. 1947, is amended to read as follows:

"**27-414.1. Limitation on extension of credit to retailers.** *A* sale or delivery *may not* be made by *a* producer-distributor, distributor, or jobber to *a* retailer, except for cash or payment within fifteen (15) days after regular billings, and all producer-distributors, distributors, and jobbers shall bill retailers at least monthly. *A* producer-distributor, distributor, or jobber *may not* extend more than fifteen (15) days' credit after billing to a retailer. *A* retailer *may not* receive delivery of milk without agreement to pay *for it* in cash within fifteen (15) days after regular billing. A correctly dated check which is honored upon presentment *is* cash within the meaning of this *section. An* extension or acceptance of credit in violation *of this section* shall be construed as rendering or receiving financial assistance. *The* licenses of producer-distributors, distributors, or jobbers involved in violation *of this section* shall be suspended or revoked as determined by the *department* in its discretion."

Section 100. Section 27-414.2, R.C.M. 1947, is amended to read as follows:

"**27-414.2. Financing prohibitions — producer and retailer.** *(1) A* producer, producer-distributor, distributor, or jobber licensed under this *chapter may not* advance or loan money or credit to, or furnish money or credit for, or refinance or cosign or guarantee promissory notes, security agreements, conditional sales contracts, or other commercial paper for or on behalf of *a* retailer. *A* producer, producer-distributor, distributor, or jobber *may not* be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer. *A* producer-distributor, distributor, or jobber licensed under this *chapter may not* advance or loan money or credit to, or furnish money or credit for, or refinance or cosign or guarantee promissory notes, security agreements, conditional sales contracts or other commercial paper for or on behalf of *a* producer. *A* producer-distributor, distributor, or jobber *may not* be financially interested, either directly or indirectly, in the conduct or operation of the business of a producer. *This* section *does* not prohibit *a* producer from belonging to, participating in, or patronizing a co-operative corporation or a producer, producer-distributor, distributor, or jobber from operating his own wholly-owned dairy products or other retail store or home-delivery retail routes.

(2) This section *does* not prohibit a producer from requesting and a distributor from granting an advance payment for milk *before* the regular date of payment *for milk* or limit in any way the right of a producer to

assign part or all of moneys which are or may become due to him from a distributor."

Section 101. Section 27-415, R.C.M. 1947, is amended to read as follows:

"**27-415. Entry, inspection and investigation.** The *department* may enter, at all reasonable hours, all places where milk is produced, processed, bottled, handled or stored, or where the books, papers, records, or documents relative to *those* transactions are kept and *may* inspect and copy *them* in any place *in this* state. *The department* may administer *oaths*, and take testimony for the purpose of ascertaining facts which, in the judgment of the *department*, are necessary to administer this *chapter*."

Section 102. Section 27-416, R.C.M. 1947, is amended to read as follows:

"**27-416. Reports of dealers — accounting system — records.** *(1)* The *department may* require *licensees* to file with *it* reports at reasonable or regular *times which* the *department* may require, showing *the licensee's* production, sale, or distribution of milk, and any information *considered* by the *department* necessary which pertains to the production, sale, or distribution of milk, either under oath or otherwise, as the *department* may direct. *Failure* or refusal to file *a report* when directed to do so *is* grounds for the revocation of *the* license and *is* a violation for which *the licensee* may be fined as provided *by this chapter*, one or both, at the discretion of the *department*.

(2) The *department* shall adopt a uniform system of accounting to be used by the distributor to account for the usage of all milk received by the distributor.

(3) A distributor and producer-distributor shall keep:

(a) A record of all milk, cream, or dairy products received, detailed as to location, names and addresses of suppliers, prices paid, and deductions or charges made, and the use to which *the* milk or cream was put;

(b) A record of the quantity of each kind of milk or dairy product manufactured and the quantity and price of milk or dairy products sold;

(c) A complete record of all milk, cream, or dairy products sold, classified as to kind and grade, showing where sold, and the amount received *in payment;*

(d) A record of the wastage or loss of milk or dairy products;

(e) A record of the items of handling expense;

(f) A record of all refrigeration facilities sold for storage purposes to any person, showing types, sizes, *and* location of *the* facilities, and the original, or duplicate original, of all agreements covering *sales for them;*

(g) Other records *which* the *department considers* necessary for the proper enforcement of *this chapter*."

Section 103. Section 27-417, R.C.M. 1947, is amended to read as follows:

"**27-417. Disposition of fines.** *(1)* All fines assessed *by a* court for violation of this *chapter* shall be paid by the court to the *department*.

(2) All fines received by the *department* shall be deposited with the state treasurer and shall be placed by him in the earmarked revenue fund. *Fines* assessed for violations of this *chapter* are earmarked for the purposes of this *chapter*."

Section 104. Section 27-421, R.C.M. 1947, is amended to read as follows:

"**27-421. Co-operation with other governmental agencies.** In order to secure a uniform system of milk control, the *department* shall confer and co-operate with the *proper* authorities of other states and of the United States, including the secretary of agriculture of the United States, and, for *those* purposes, the *department may* conduct joint hearings, issue joint or concurrent orders and exercise all its powers under this *chapter*."

Section 105. Section 27-422, R.C.M. 1947, is amended to read as follows:

"**27-422. Violations made misdemeanors — penalties.** *(1) A* person who *produces, sells, distributes, or handles* milk in any way, except as a consumer, without a license *from the department* as required by this *chapter, or who violates a lawful rule of the department or board, is* guilty of a misdemeanor *punishable* by a fine not exceeding six hundred dollars ($600). Each day's violation *is* a separate offense.

(2) The district courts have original jurisdiction in all criminal actions for violations of this *chapter*, and in all civil actions for the recovery or enforcement of *penalties*, provided for in this *chapter. All of those* actions, both criminal and civil, shall be tried in the district court.

(3) The county attorneys, in their respective counties, *shall* diligently prosecute all violations of this *chapter*."

Section 106. Section 27-423, R.C.M. 1947, is amended to read as follows:

"**27-423. Constructions, exceptions and limitations.** *(1)* The license required by this *chapter is* in addition to any other license required by *state law* or any municipality of *this* state. This act shall apply to every part of the state of Montana.

If any portion of this *chapter* is held invalid or unconstitutional, *the* holding *does* not affect the validity of the *chapter* as a whole, or any part *of it* which can be given effect without the part so held to be unconstitutional or invalid.

(2) This chapter does not apply to foreign or interstate commerce except in so far as *it* may be effective in compliance with the United States constitution, and with the laws of the United States. It is the intention of the legislature, however, that the instant, whenever that may be, that the handling, within the state by a dealer, of milk produced outside of the state, becomes the subject of regulation by the state in the exercise of its police powers, the provisions of this *chapter*, affecting intrastate

milk, immediately apply and the powers conferred by this *chapter* attach thereto."

Section 107. Section 27-424, R.C.M. 1947, is amended to read as follows:

"27-424. Additional remedies. The *department* may *begin any proceeding* at law or in equity as may appear necessary to enforce compliance with this *chapter* or to enforce compliance with *an* order *or* rule of the board *or department adopted under* this *chapter* or to obtain a judicial interpretation of any of *them. In* addition to any other remedy, the *department* may apply to the district court of the district *where* the action arises, for relief by injunction, mandamus, or any other appropriate remedy in equity without being compelled to allege or prove that an adequate remedy at law does not otherwise exist. *The department may not* be required to post bond in *an* action to which it is a party whether upon appeal or otherwise. All legal actions may be brought by or against the board *or department* in the name of the *department of business regulation* and it *is* not necessary in *an* action to which the *department* is a party that *the* action be brought by or against *this* state on relation of the *department.* The *department may sue* by its own attorney *and* it *may also* call upon *a* county attorney to represent it in the district court of *his* county, or the attorney general to represent it on appeal to the supreme court, or it may associate its own *attorney* with either in any court."

Section 108. Section 27-426, R.C.M. 1947, is amended to read as follows:

"27-426. Bonds required of distributors — amounts — forms and conditions. *(1) A* distributor before purchasing milk from a producer shall deliver to the *department* a surety bond of *not less than* one thousand dollars ($1,000), executed by the *distributor* as principal and by a surety company authorized to do business in this state as surety. *The* bond shall be *on* a form approved by the *department* and shall be conditioned upon the payment, in the manner required by this *chapter,* of all amounts due to producers for milk purchased by *the distributor* during the license year. *The* bond shall be to the state in favor of every producer of milk. In case of failure by a distributor to pay *a* producer for milk in the manner required by this *chapter,* the *department* shall proceed *immediately* to ascertain the names and addresses of all producer-creditors of *that* distributor, together with the amounts due them and shall request all *those* producer-creditors to file a verified statement of their respective claims. *The department* shall *then sue* on the bond on behalf of *the* producer-creditors. Upon *suing on the* bond, the *department* may require the filing of a new bond; and immediately upon a recovery in *an* action upon *the* bond, *the* distributor shall file a new bond. *Upon* failure to file *a new bond* within ten (10) days in either case, *the* failure *is* grounds for the revocation or suspension of the license of *the* distributor. *If* recovery *on* the bond is not sufficient to pay all of the claims as finally determined by the court, *the* amount recovered shall be divided pro rata among *the* producer-creditors.

(2) The minimum bond of one thousand dollars ($1,000) shall be required of distributors purchasing an average daily quantity of milk of less than one hundred *(100)* gallons; distributors purchasing an average daily quantity of one hundred *(100)* gallons and less than two hundred *(200)* gallons during any calendar month during a license year shall post a bond in the amount of two thousand dollars ($2,000); distributors purchasing an average daily quantity of two hundred *(200)* gallons and less than three hundred *(300)* gallons during any calendar month during a license year shall post a bond in the amount of three thousand dollars ($3,000); distributors purchasing an average daily quantity of three hundred *(300)* gallons or more during any calendar month during a license year shall post a bond in the sum of five thousand dollars ($5,000).

(3) If a distributor increases his purchases of milk during the license year *to* exceed the amount for which *he* is bonded, *he* shall *immediately* post *the* additional bond required to comply with this section.

(4) The *department may* require *a* distributor to furnish a bond in addition to those specified *in this section,* if, after notice and hearing and upon good cause shown, it determines *the* additional bond *is* required to assure payment of all amounts due or to become due to producers.

(5) Failure of *a* distributor who purchases milk from producers to *post a* bond required *by this section is* a violation of this *chapter.*"

Section 109. Section 35-145, R.C.M. 1947, is amended to read as follows:

"35-145. Home owners' loan corporation bonds as security for deposit of public funds. Subject to rules prescribed by the *department of community affairs,* the bonds and other obligations herein made eligible for investment, may be used as security for all deposits of public funds or obligations for which depository bonds or any kind of bonds or other securities are required, or may by law be deposited as security."

Section 110. Section 47-202, R.C.M. 1947, is amended to read as follows:

"47-202. Definitions. Unless the context *requires otherwise,* in this act:

(1) "Person" *means* individuals, partnerships, associations, corporations, and all legal entities in the loaning business.

(2) "License" *means* one or both of the licenses provided for by this act.

(3) "Licensee" *means* the person holding *a* license.

(4) "Department" means the department of business regulation provided for in Title 82A, chapter 4.

(5) "Consumer type loan business" *means* the business of making loans of two thousand five hundred dollars ($2,500) or less generally repayable in substantially equal installments."

Section 111. Section 47-203, R.C.M. 1947, is amended to read as follows:

"47-203. Department — powers and duties — adoption of rules.

(1) All powers and duties of regulation and supervision conferred by this act are vested in the *department.* The *department* shall adopt rules necessary to carry out the intent and purposes of this act. A copy of every rule shall be mailed to each licensee at least fifteen (15) days in advance of its effective date. *However,* the failure of a licensee to receive a copy of *a rule does* not exempt him from *complying* with *a rule adopted under this act.*

(2) All rules adopted under this act *are* binding *on* all licensees and enforceable by the *department* through the power of suspension or revocation of licenses."

Section 112. Section 47-206, R.C.M. 1947, is amended to read as follows:

"47-206. License, when required — display — nontransferable — removal — license year, fees — use. *(1) A* place of business operated under this act shall properly *display on the premises* a nontransferable and nonassignable license. The same person may obtain additional licenses upon compliance with this act as to each license. Application for a license shall be on a form prescribed and furnished by the *department.* A licensee may move his place of business from one place to another within a county without obtaining a new license, provided he obtains written permission from the *department.*

(2) With each application *the applicant* shall *submit* fifty dollars ($50) as an investigation fee and one hundred twenty-five dollars ($125) as a license fee. *The* license fee shall be returned to the applicant if the application is denied. The license year *is* the calendar year and the license fee for any period less than six (6) months *is* sixty-two dollars fifty cents ($62.50). *A* license *remains* in force until surrendered, suspended, or revoked.

(3) All moneys collected under the authority of this act shall be paid into the state treasury by the *department.*"

Section 113. Section 47-207, R.C.M. 1947, is amended to read as follows:

"47-207. Issuance or denial of license, when — mailing of denial order and findings. *(1)* Within thirty (30) days after an application for license is filed with the *department,* together with the required fees, the *department* shall issue the license if the character and general fitness of the applicant is such as to warrant belief that the business will be operated lawfully and fairly within the provisions of this act, or enter an order denying *the license,* if *it finds* to the contrary.

(2) A copy of the order granting or denying a license, together with a summary of the *department's* findings, shall be filed in the office of the *department* and shall be public record. A copy of the order denying a license, together with a summary of the *department's* findings, shall be mailed postage prepaid, to the applicant at the address stated in the application."

Section 114. Section 47-215, R.C.M. 1947, is amended to read as follows:

"47-215. Investigations, when — who may be investigated. The *department* may at any time investigate any transaction with borrowers and may examine the books, accounts, and records in this state to discover violations of this act by (1) *a* licensee, (2) *a* person who advertises for, solicits, or holds himself *out* as willing to make loans in amounts of two thousand five hundred dollars ($2,500) or less, or (3) *a* person whom the *department* has reason to believe is violating or is about to violate this act."

Section 115. Section 47-218, R.C.M. 1947, is amended to read as follows:

"47-218. Annual report — contents — verified — publication. *A* licensee shall annually before April *15,* file *a* report for the preceding calendar year with the *department. The* report shall give information with respect to the financial condition of *the* licensee and shall include: The name and address of the licensee; balance sheets at the beginning and end of the calendar year; a statement of income and expenses; a reconciliation of surplus or net earnings with the balance sheets; a schedule of assets used in the consumer loan business; an analysis of charges, size of loans made and types of security on loans; an analysis of suits and foreclosures; and other relevant information the *department* may reasonably require concerning the business during the preceding calendar year of each licensed place of business conducted by *the* licensee *in this* state. *The* report shall be made under oath and be in *a* form prescribed by the *department, which* shall publish annually an analysis and *summary* of *the* reports."

Section 116. Section 47-223, R.C.M. 1947, is amended to read as follows:

"47-223. Revocation and suspension of license, when. The *department,* upon ten (10) days' written notice to the licensee and statement of the grounds and upon reasonable opportunity to be heard at a public hearing, if requested by the licensee, may suspend, but not for more than thirty (30) days, or revoke *a* license if *it* finds the licensee has knowingly violated any provision of this act. *When* the *department enters* an order revoking or suspending a license, *it* shall mail a copy of *the* order by registered mail to the licensee at the address for which the license was issued."

Section 117. Section 50-604, R.C.M. 1947, is amended to read as follows:

"50-604. Copies of bills and invoices to be kept for inspection. *A* person, firm, or corporation, mining, shipping, or producing coal, and all persons, firms or corporations wholesaling, jobbing, exchanging, offering for sale or selling at retail any coal *in this* state, shall keep a true, accurate, and complete copy of all the original statements, bills, and invoices of all coal produced, shipped, marketed, exchanged, or sold for at least one (1) year. *All* papers, records and files of any person, firm, or corporation transporting, producing, shipping, exchanging, or selling any coal *in this* state shall, at all times, be open to inspection by the attorney general, the county attorneys, and the *department of business regulation* for the purposes of enforcing this act."

Section 118. Section 50-606, R.C.M. 1947, is amended to read as follows:

"50-606. Enforcement of chapter. *The department of business regulation* shall enforce this act and the attorney general and the county attorneys *shall* prosecute all cases arising under *its* provisions."

Section 119. There is a new R.C.M. section numbered 51-101.1 that reads as follows:

51-101.1. Definitions. Unless the context requires otherwise, in this act, "department" means the department of business regulation provided for in section 82A-401.

Section 120. Section 51-106, R.C.M. 1947, is amended to read as follows:

"51-106. Fair price for agricultural products, how determined. *(1)* The following method shall be used in determining fair prices for agricultural products sold on local markets, in *a* trade area, district or city in which the major portion of *an* agricultural commodity or product is produced within or adjacent to *the* trade area, city or district:

(a) When seventy-five percent (75%) of producers of *an* agricultural product or commodity marketing *those* products or commodities within *a* trade area, district or city determine what is a fair price based upon competitive and other factors for their product or commodity, it shall be *considered* the fair price for *that* product or commodity under the terms of this act.

(b) Those producers through their agents shall file with the *department the* fair price and request a hearing for the establishment of fair prices to jobbers, wholesalers, retailers, and consumers of *the* agricultural products or commodities. Any organization representing consumers *may* not be denied representation at *the* meeting.

(2) After the establishment of a schedule of fair prices for *the* agricultural products or commodities, it *is* a violation of this act for *a* producer, jobber, wholesaler or retailer to sell or buy *an* agricultural commodity or product below *the* price established by the *department. That* action *is* punishable under the terms provided in this act."

Section 121. Section 51-113, R.C.M. 1947, is amended to read as follows:

"51-113. Department — administration of act by — intervention — orders — review — appeals — process — finality of order. (1) The *department shall* prevent *a* person, firm, or corporation from violating any of the provisions of this chapter.

(2) Upon receiving notice that *a* person, firm or corporation is violating or has violated any of the provisions of this chapter, the *department* shall immediately notify the person giving *that* notice either to appear *before the director of the department* or to make a written reply to show probable cause of *that* violation. If probable cause is shown, the *department* must *then* make its own investigation and within sixty (60) days of the finding of probable cause must make a written report of its investigation and must mail a copy of its findings to the person initially giving notice of a violation.

(3) If, after *an* investigation the *department has* reason to believe that *the* person, firm, or corporation has been or is engaging in any course of conduct or doing any act in violation of this chapter and if it *appears* to the *department* that a proceeding by it would be to the interest of the public, it shall issue and serve upon *the* person, firm or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed not less than five (5) days after the service of *the* complaint. *A* complaint may be amended by the *department* in its discretion at any time five (5) days prior to the issuance of an order based *on it.* The person, firm or corporation so complained of *may* appear at the place and time so fixed and show cause why an order should not be entered by the *department* requiring *that* person, firm, or corporation to *stop* the violation of the law charged in *the* complaint. Any person, firm or corporation may make application, and upon good cause shown may be allowed by the *department* to intervene and appear in *the* proceeding by counsel or in person. The testimony in *the* proceeding shall be reduced to writing and filed in the office of the *department.* If upon *the* hearing the *department believes* that the act or conduct in question is prohibited by this chapter, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on *that* person, firm, or corporation an order requiring *that* person, firm, or corporation to *stop the* acts or conduct. Until a transcript of the record in *the* hearing *has* been filed in a district court, as hereinafter provided, the *department* may at any time, upon *the* notice and in *the* manner as it *considers* proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

(4) A court reviewing an order of the department may issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors *pending the suit.*

(5) To the extent that the order of the *department* is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of *the* order of the *department.*

(6) Proceedings in the district court shall be given precedence over other civil cases pending therein, and shall be in every way expedited.

(7) A person, firm, or corporation who violates an order of the *department* to cease and desist after it has become final, and while *the* order is in effect shall forfeit and pay to *this* state a penalty of not more than one thousand dollars *($1,000)* for each violation, which shall accrue to *this* state and may be recovered in a civil action brought by *this* state.

(8) The remedies and method of enforcement of this chapter provided for in this section *are* concurrent and in addition to the other remedies provided in this chapter."

Section 122. Section 51-114, R.C.M. 1947, is amended to read as follows:

"51-114. Procedure for establishing cost survey — hearing — notice. (1) The *department shall,* whenever application *has* been made by ten *(10)* or more persons, firms, or corporations within *a* particular trade or business, establish the cost survey provided for in section 51-105. When petition for *a* cost survey has been so presented to the *department,* the *department* shall, as soon as possible, fix a time for a public hearing upon the question of whether *the* cost survey should be established. *The* hearing shall be held at the office of *the department* and upon *that* notice *which* the *department* may by rule require. *However,* notice of *the* hearing shall be published for at least two *(2)* successive weeks in *the* daily newspaper or newspapers as the *department* may designate as most commonly circulated in the counties to be affected by *the* cost survey. *The* notice shall further state the locality or area in respect to which *the* cost survey is proposed to be established and the particular trade or business to be affected *by it.*

(2) At the time fixed in *the* notice any person, firm, or corporation *may* appear and be heard by the *department* upon all questions to be determined by it as provided in this section. If the *department determines* that a cost survey shall be established, it shall at the same hearing proceed to classify and define the particular trade or business, or parts thereof, to be affected, determine and delimit the particular area within which *the* trade or business shall be affected, and find and determine the probable "cost of doing business" or "overhead expense," stated in percentage of invoice or replacement cost which would probably be incurred by the most efficient person, firm, or corporation *in the* trade or business within *the* area.

(3) *Where* the *department determines* that the probable "cost of doing business" or "overhead expense," stated in percentage of invoice or replacement cost which would probably be incurred by the most efficient person, firm, or corporation in *the* trade or business is the same for the entire state, then the *department* may, upon proper notice given as provided *in this section,* create one trade area *embracing* the entire state.

(4) The percentage so determined shall be presumed to be the actual "cost of doing business" and "overhead expense" of any person, firm, or corporation in *the* trade or business and within the area affected by *the* cost survey."

Section 123. Section 51-115, R.C.M. 1947, is amended to read as follows:

"51-115. Hearings and investigations — contempts. The *department* for the purpose of conducting hearings and investigations which, in the opinion of the *department,* are necessary and proper for the exercise of the powers vested in it by this chapter *has* the following powers:

(1) The *department* shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of *a* person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the *department may* issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation

or in question, before the *department,* or before its duly authorized agent conducting the investigation. *An* agent, duly authorized by the *department* for *those* purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. *The* attendance of witnesses and the production of evidence may be required from any place *in this* state at any designated place of hearing.

(2) In any case of contumacy or refusal to obey a subpoena issued to *a* person, any district court of *this* state, within any district where the inquiry is carried on or where a person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the *department has* jurisdiction to issue to *that* person, an order requiring *him* to appear before the *department,* or its duly authorized agent, and there to produce evidence if so ordered, or there to give testimony *regarding* the matter under investigation. *Failure* to obey *the* order of the court may be punished by *the* court as a contempt.

(3) A person *may not* be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the *department,* on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. *An* individual *may not* be prosecuted or subjected to *a* penalty or forfeiture for or on account of *a* transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self incrimination, to testify or produce evidence, except that *an* individual so testifying *is* not exempt from prosecution and punishment for perjury committed in testifying."

Section 124. Section 51-116, R.C.M. 1947, is amended to read as follows:

"51-116. Alteration of invoices unlawful. It *is* unlawful for *a* person, partnership, firm, corporation, joint stock company, or other association, as defined in section 51-103, to change, alter, substitute, or falsify *an* invoice where *the* practice tends to injure a competitor or to destroy competition or to mislead *a* court or *the department of business regulation. That* practice is unfair trade practice and *a* person, firm, partnership, corporation, or association resorting to *that* trade practice *is* guilty of a misdemeanor and *is* subject to the penalties provided in section 51-112."

Section 125. Section 60-203.1, R.C.M. 1947, is amended to read as follows:

"60-203.1. "Department" defined. *Unless the context requires otherwise, in this act, "department"* means the *department of business regulation provided for in Title 82A, chapter 4."*

Section 126. Section 60-203.2, R.C.M. 1947, is amended to read as follows:

"60-203.2. Enforcement of chapter — rules. *This* chapter shall be enforced by the *department. It* may *adopt* necessary and reasonable rules for the interpretation of the provisions and intent of this chapter, and *those rules* have the force and effect of law."

Section 127. Section 60-217, R.C.M. 1947, is amended to read as follows:

"60-217. Samples of product may be taken by department or user — inspection by department — interference with inspections — inspectors — employment. *(1)* For the purpose of obtaining information regarding suspected violation of this act, *the department* shall have access to all places where the commodities *subject to regulation under this act* are sold, offered for sale or kept for sale, manufactured, transported, or stored, and may take samples for analysis *upon* tendering payment *for them*.

(2) A user or customer *may*, upon tendering payment, receive from *a* dealer a sample of *a* commodity sold for *the* purpose of having *an* analysis and *a* test made by the *department*.

(3) The *department may* inspect any of the commodities *subject to this act*, whether *they* originate at points *outside* the state or otherwise and whether *they* are in transport or at rest in places where they are dangerous to human life or public safety.

(4) A person obstructing *an* entry or inspection authorized by this section, or failing upon request to assist *in it is* in violation of this act. The *department* shall employ from time to time *those* inspectors *it considers* necessary to carry out this act."

Section 128. Section 60-219, R.C.M. 1947, is amended to read as follows:

"60-219. Revocation of license for violations — hearing required. If the *department finds* that *a* dealer operating under this act has violated any of the provisions *of it*, or of any lawful order or decision of the *department, adopted* pursuant to this act, *it* shall, after due hearing, noticed for not less than ten *(10)* days, revoke, cancel, or suspend any license. *The* revocation, cancellation or suspension, may be conditioned on *those* terms *which* the *department considers* just and proper."

Section 129. Section 60-220, R.C.M. 1947, is amended to read as follows:

"60-220. Revocation of license of petroleum dealers for unreasonable or discriminatory prices — procedure. The *department may* revoke the license to engage in the business of selling gasoline and other petroleum products *in this* state, issued to *a* person, firm, partnership, association, or corporation, where *that* person, firm, partnership, association, or corporation is by *the department* found guilty of charging an exorbitant or unreasonable price for gasoline sold *in this* state to residents of the state, or of discriminating between individuals or localities *in this* state in the prices charged for gasoline, or of discriminating between citizens of this state and citizens of adjoining states, to the disadvantage of the former, in the prices charged for gasoline. Anybody aggrieved by the action of *a* person, firm, partnership, association, or corporation in charging an exorbitant or unreasonable price for gasoline or in discriminating between individuals or localities or in discriminating between citizens of this state and citizens of adjoining states may file written charges with *the department* against *the* person, firm, partnership, association, or corporation. *The department* shall *then* issue a citation to *the* person, firm, partnership, association, or corporation to show cause before *it* within twenty *(20)* days why his, their, or its license should not be revoked. *The* person, firm, partnership, association, or corporation may appear by counsel at the hearing and contest the charge. If the charge *is* established by a preponderance of the evidence the commissioner shall make an order revoking the license, otherwise the charge shall be dismissed. Nothing provided in this act is intended to interfere with or regulate commerce between states, the legislature in passing *this act* being actuated solely by a desire to protect the citizens of *this state* against imposition."

Section 130. Section 60-223, R.C.M. 1947, is amended to read as follows:

"60-223. Petroleum products dealers — definition of terms. *Unless the context requires otherwise in sections 60-223 through 60-233:*

(1) "Sell" and "sale" *means* barter and exchange.

(2) "Dealer" means all persons, firms, copartnerships, corporations, trusts, or agencies.

(3) "Petroleum dealer" means a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer, or in the business of selling or offering or advertising for sale or in the business of refining or manufacturing or keeping for sale *in this* state any gasoline, kerosene, distillate, road oil, fuel oil, lubricating oil, and greases, or any oil or gas or oil and gas product, except as otherwise defined as a liquefied petroleum dealer in subsection *(4)*.

(4) "Liquefied petroleum *dealer" means* a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer, or in the business of selling or offering or advertising for sale or in the business of refining or manufacturing or keeping for sale *in this* state any petroleum product composed predominately of any of the following hydrocarbons, or mixtures thereof: Propane, propylene, butanes (normal butane or isobutane), and butylenes.

(5) "Department" means the department of business regulation provided for in Title 82A, chapter 4."

Section 131. Section 60-224, R.C.M. 1947, is amended to read as follows:

"60-224. License required as a condition precedent to the right to do business. *A* petroleum dealer or liquefied petroleum dealer *may not* do business in *this* state until a nontransferable license has been issued to *him* by the *department. The* license shall be obtained by the dealer by making application to the *department* upon blank forms provided by the *department* for the right to do business in *this* state, and after the application has been filed, the license, without fee, shall be issued. *A* dealer who has not been issued a license for the right to do business in *this* state by the *department* and who is found selling or offering for sale or delivering or distributing to a consumer shall, upon conviction, be fined as provided by this act. *A* vehicle tank, or vehicle tank and meter, or any other measuring device used by *that* dealer for *the* delivery or distribution may be confiscated and seized as evidence by the *depart-*

ment. The *department and its employees and agents are* not liable to the owner or any other persons, firms, copartnerships, corporations, trusts, or agencies for damages, directly or indirectly, caused by or resulting from *the* seizure."

Section 132. Section 60-228, R.C.M. 1947, is amended to read as follows:

"60-228. Petroleum and liquefied petroleum vehicle tank license fees. *(1)* The license fee for all petroleum or liquefied petroleum vehicle tanks without meters used for distribution of *those* products *is* as follows: Up to and including two hundred (200) gallons, eight dollars ($8); over two hundred (200) and including three hundred (300) gallons, ten dollars ($10); over three hundred (300) and including five hundred (500) gallons, twelve dollars ($12); over five hundred (500) and including one thousand (1,000) gallons, sixteen dollars ($16); over one thousand (1,000) and including two thousand (2,000) gallons, twenty dollars ($20); for each additional one thousand (1,000) gallons over two thousand (2,000) gallons, four dollars ($4).

(2) All licenses *are* annual and nontransferable and expire December 31. There *is* an additional charge of fifty per cent (50%) on all license fees, required by this act, that are not paid before March 1 of each year, where the vehicle tank, or meter, or measuring device is in use. If *the* fee is not paid the equipment shall be sealed and removed from service, by the *department*, and it *is unlawful* for anyone to use the device or break the seal until all *the* fees have been paid."

Section 133. Section 60-229, R.C.M. 1947, is amended to read as follows:

"60-229. Dispensation of petroleum products. It *is* unlawful to make hose delivery from petroleum vehicle tanks unless the tanks have been calibrated by the *department.* Part of a compartment delivery can only be made by an approved, calibrated, and sealed meter or an approved can. Gauge stick measurement will not be permitted. All tank markers must be positioned and sealed as provided by the *department.* The *department* shall, by proper regulation, fix fees for retesting meters or measuring devices or vehicle tanks used for distribution to a consumer by petroleum or liquefied petroleum dealers, and for any other special service rendered."

Section 134. Section 60-230, R.C.M. 1947, is amended to read as follows:

"60-230. Dispensation of liquefied products. It *is* unlawful to sell or deliver liquefied petroleum to a consumer, as a liquid, except as provided by this act. Full compartment sales or deliveries may only be made in a manner that shall be provided by the *department.* All other sales or deliveries may only be made through a meter which has been approved, calibrated and sealed by the *department,* or by weight, unless otherwise provided by the *department.*"

Section 135. Section 60-231, R.C.M. 1947, is amended to read as follows:

"60-231. Temperature correction of liquefied petroleum to sixty degrees (60°) Fahrenheit when sold to a consumer. It *is unlawful* to sell or offer for sale or deliver liquefied petroleum to a consumer, as a liquid or by liquid measurement, the measurement of which has not been temperature corrected to sixty degrees (60°) Fahrenheit, unless otherwise provided by the *department.* Temperature correction shall only be made by means of an automatic compensating device which has been approved, calibrated, and sealed by the *department*; or by weight as provided by the *department.*"

Section 136. Section 60-232, R.C.M. 1947, is amended to read as follows:

"60-232. Rules and standards. The *department may* adopt *those* rules and standards *it considers* necessary for the administration and enforcement of this act."

Section 137. Section 74-602, R.C.M. 1947, is amended to read as follows:

"74-602. Definitions. *(1)* Unless the context *requires otherwise,* in this act:

(a) "Goods" means all chattels personal, including motor vehicles and merchandise certificates or coupons exchangeable for chattels personal, but not including money or things in action. The term includes goods which, at the time of the sale or subsequently, are to be so affixed to realty as to become a part thereof whether or not severable *from it.*

(b) "Services" means work, labor, and services furnished in the delivery, installation, servicing, repair, or improvement of goods.

(c) "Motor vehicle" means any new or used automobile, mobile home, motorcycle, truck, trailer, semitrailer, truck tractor, and all vehicles with any power, other than muscular power, primarily designed or used to transport persons or property on a public highway, excepting however, any vehicle which runs only on rails or tracks or in the air.

(d) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment transaction and not for the purpose of resale.

(e) "Retail seller" or "seller" means a person who sells goods or furnishes services to a retail buyer in a written retail installment contract or written retail installment transaction.

(f) "Retail installment transaction" means a written contract to sell or furnish, or the sale or furnishing of goods or services, by a retail seller to a retail buyer pursuant to a retail charge account agreement or under a retail installment contract.

(g) "Retail charge account agreement" means an instrument in writing prescribing the terms of retail installment transactions which may be made *under it* from time to time *under* which a retail seller gives to a retail buyer the privilege of using a credit card issued by the retail seller or any other person or other credit confirmation or identification for the

purpose of purchasing goods or services from the retail seller, from the retail seller and any other person, or from a person licensed or franchised by the retail seller, and under the terms of which a finance charge, as defined in this section may be computed in relation to the buyer's balance in the account from time to time.

(h) "Retail installment contract" or "contract" means an agreement evidencing a retail installment transaction entered into in this state *under* which a buyer promises to pay in one or more deferred installments the time sale price of goods *or* services, *or both.* The term includes a chattel mortgage, conditional sales contract, and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract.

(i) "Cash sale price" means the price stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge account agreement for which the seller would have sold or furnished to the buyer, and the buyer would have bought or obtained from the seller, the goods or services which are the subject matter of the retail installment transaction, if *the* sale had been a sale for cash. The cash sale price may include any taxes, registration, certificate of title, license, and official fees, and cash sale prices for services, if any, and for accessories and their installation and for delivery, servicing, repairing, or improving the goods.

(j) "Official fees" means the fees prescribed by law for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.

(k) "Principal balance" means the cash sale price of the goods or services which are the subject matter of a retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is made therefor and stated in the contract, for insurance and other benefits and official fees, minus the amount of the buyer's down payment in money or goods.

(l) "Finance charge" means the amount, as limited by section 74-608, in addition to the principal balance, agreed upon between the buyer and the seller, to be paid by the buyer for the privilege of purchasing goods or services to be paid for by the buyer in one or more deferred installments.

(m) "Time sale price" means the total of the cash sale price of the goods or services and the amount, if any, included for insurance and other benefits if a separate identified charge is made therefor and the amounts of the official fees and the finance charge.

(n) "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers. The term includes, but is not limited to, a bank, trust company, investment company, or savings and loan association, if so engaged. The term *does* not include a person who makes only isolated purchases of retail installment contracts, which purchases are not being made in the course of repeated and successive purchases of retail installment contracts from the same seller.

(o) "Holder" means the retail seller of the goods or services under the retail installment contract or retail charge account agreement, or a person who establishes and administers retail charge account agreements with retail buyers, the assignee, if the retail installment contract or the retail charge account agreement or the balance in the account under either has been sold or otherwise transferred, or any other person entitled to the rights of the retail seller under any retail installment contract or any retail charge account agreement.

(p) "Person" means an individual, partnership, corporation, association, and any other group however organized.

(q) *"Department"* means the *department of business regulation provided for in Title 82A, chapter 4.*

(2) This act *does not apply* to the lending of money by banks or other lending institutions and securing loans by chattel mortgages of goods in the ordinary course of lending by *those* banks or other lending institutions. *However,* this act pertains to the extension of credit by *those* banks or other lending institutions *under* retail installment contracts or credit cards issued by *those* banks or other lending institutions."

Section 138. Section 74-604, R.C.M. 1947, is amended to read as follows:

"74-604. Denial, suspension, or revocation of licenses. (a) Renewal of a license originally granted under *section 74-603* may be denied, or a license may be suspended or revoked by the *department* on the following grounds: (1) Material misstatement of fact in the application for license; (2) willful failure to comply with any provision of this act relating to retail installment contracts; (3) defrauding any retail buyer to the buyer's damage; (4) fraudulent misrepresentation, circumvention, or concealment by the licensee through subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the retail buyer under this act.

(b) If a licensee is a partnership, association, or corporation, it *is* sufficient cause for the suspension or revocation of a license that any officer, director, or trustee of a licensed association or corporation, or any member of a licensed partnership, has acted or failed to act *so* as *to provide* cause for suspending or revoking a license to *that* party as an individual. Each licensee *is* responsible for the acts of his employees while acting as his agent, if *the* licensee after actual knowledge of *the* acts retained the benefits, proceeds, profits, or advantage accruing from *the* acts or otherwise ratified *the* acts.

(c) *A* license *may not* be denied, suspended, or revoked, except after hearing. The *department* shall give the licensee at least ten (10) *days* written notice, in the form of an order to show cause, of the time and place

of *the* hearing by registered mail addressed to the principal place of business in this state of *the* licensee. The notice shall contain the grounds of complaint against the licensee. *An* order suspending or revoking *a* license shall recite the grounds upon which *it* is based. The order shall be entered upon the records of the *department* and *is* not effective until thirty (30) *days after* written notice *has been* forwarded by registered mail to the licensee at *the* principal place of business. No revocation, suspension, or surrender of *a* license *impairs* or *affects* the obligation of *a* lawful retail installment contract acquired previously by the licensee."

Section 139. Section 74-605, R.C.M. 1947, is amended to read as follows:

"**74-605. Investigations and complaints.** (a) The *department may* make *those* investigations *it considers* necessary and, to the extent necessary for this purpose, *it* may examine *a* licensee or any other person and *may* compel the production of relevant books, records, accounts, and documents.

(b) *A* retail buyer having reason to believe that this act relating to his retail installment contract has been violated may file with the *department* a written complaint setting forth the details of *the* alleged violation and the *department*, upon receipt of *the* complaint, may inspect the pertinent books, records, letters, and contracts of the licensee and retail seller involved."

Section 140. Section 74-606, R.C.M. 1947, is amended to read as follows:

"**74-606. Powers of department.** (a) The *department* shall adopt rules necessary to carry out the intent and purposes of this act. All rules of general application shall be filed in the office of the *department*. A copy of every rule shall be mailed to each licensee, postage prepaid, at least fifteen (15) days in advance of its effective date. *However*, the failure of a licensee to receive a copy of *the* rules *does* not exempt him from the duty of compliance with *those* rules lawfully *adopted under the provisions of this section.*

(b) The *department may* issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before *it* in any matter over which *it* has jurisdiction, control, or supervision pertaining to this act. The *department may* administer oaths and affirmations to *a* person whose testimony is required.

(c) If *a* person *refuses* to obey *a* subpoena, or to give testimony, or to produce evidence as required *by it*, *a* judge of the district court of the county in which the licensed premises are located may, upon application and proof of *the* refusal, *issue a* subpoena or subpoena duces tecum for the witness to appear before the *department* and to give testimony, and to produce evidence as required *by it. The* clerk *of court* shall *then* issue *the* subpoena, as directed, under the seal of *the* court, requiring the person to whom it is directed to appear at the time and place designated *in it.*

(d) If *a* person served with *a* subpoena *refuses* to obey *it, or* to give testimony, *or* to produce evidence as required *by it*, the *department* may

apply to the judge of the court issuing *the* subpoena for an attachment against *that* person, as for a contempt. The judge, upon satisfactory proof of *the* refusal, shall issue an attachment, directed to any sheriff, constable, or police officer, for the arrest of *that* person, and upon his being brought before *the* judge, proceed to a hearing of the case. The judge *may* enforce obedience to *the* subpoena, and the answering of any question, and the production of any evidence that may be proper by a fine, not exceeding one hundred dollars ($100), or by imprisonment in the county jail, or by both fine and imprisonment, and to compel *the* witness to pay the costs of *the* proceeding."

Section 141. Section 82A-401, R.C.M. 1947, is amended to read as follows:

"**82A-401. Department of business regulation — head.** There is a department of business regulation. The department head is *a director of business regulation appointed by the governor in accordance with section 82A-106.*"

Section 142. There is a new R.C.M. section numbered 82A-401.1 that reads as follows:

82A-401.1. Functions of department. The department and its units are responsible for administering laws pertaining to business regulation, including, but not limited to, laws pertaining to:

(1) Banks and banking (Title 5, chapters 1 through 14);

(2) Building and loan associations (Title 7, chapter 1);

(3) Credit unions (Title 14, chapter 1);

(4) Consumer protection (Title 85, chapter 4);

(5) Supervision of the milk industry (Title 27, chapter 4);

(6) Consumer loans (Title 47, chapter 2);

(7) Sale and marketing of coal (Title 50, chapter 6);

(8) Unfair business practices (Title 51, chapter 1);

(9) Regulation of petroleum products (Title 60, chapter 2);

(10) Retail installment sales (Title 74, chapter 6);

(11) Standard weights and measures (Title 90, chapter 1);

(12) Proprietary post-secondary educational institutions (Title 75, chapter 92).

Section 143. Section 82A-406, R.C.M. 1947, is amended to read as follows:

"**82A-406. Board of milk control — qualifications — allocated — designation.** (1) *There is a* board of milk control.

(2) The board consists of five (5) members. A member may not be connected in any way with the production, processing, distribution, or wholesale or retail sale of milk or dairy products. A member may not have held

an elective or appointive public office during the two (2) years immediately preceding his appointment, and a member may not hold a public office, either elective or appointive, during his term on the board. Not more than three (3) members may be of the same political party or residents of the same congressional district.

(3) The board is *allocated* to the department for administrative purposes only as prescribed in section 82A-108.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112."

Section 144. Section 86-703, R.C.M. 1947, is amended to read as follows:

"86-703. Report of institution holding deposited money. *A* banking institution, or savings or building and loan association, receiving money in trust under section 86-702, shall report to the *department of business regulation* before February *1* of each year, all amounts received and held in trust. This report shall show the name and address of each trustee and cestui que trust, the principal amount remaining and the interest or dividends paid on each such account."

Section 145. Section 89-1708, R.C.M. 1947, is amended to read as follows:

"89-1708. Delivery of bonds — disposition of proceeds. *If* bonds are sold for cash, they shall be delivered by the board of commissioners to the county treasurer of the county *in which* the office of the district is located, who shall deliver them to the purchaser upon receipt of the purchase price, and after making a complete record of *them.* Delivery of the bonds may be made by the county treasurer to the purchaser at any place or places *inside* or *outside this* state, and *the* county treasurer may receive the proceeds of the sale of *the* bonds at *the* place or places of delivery. The county treasurer shall place the proceeds of *the* sale to the credit of *the* district, and the *proceeds* shall be paid out by the county treasurer only upon the written order of the board of commissioners, signed by the president and secretary under the seal of the district. *The* proceeds shall be *spent only* for the purpose for which *the* bonds were issued. *If* any portion of the funds realized from the sale of bonds *is* not needed immediately for the purpose for which *the* bonds were issued, the board of commissioners *may* direct the investment of *the* funds, and any other surplus funds of the district, of any portion thereof, in interest-bearing securities of the United States, or of the state of Montana, or in interest-bearing certificates of deposit of national or state banks approved by the *department of community affairs. A bank* shall furnish an indemnity bond to be approved by *the* board of commissioners and the *department of community affairs.* The county treasurer shall transfer to the credit of the district, and place to the credit of *the* fund or funds as the board of commissioners may direct, all interest received upon money or securities of the district entrusted to his care."

Section 146. Section 90-153, R.C.M. 1947, is amended to read as follows:

"90-153. Meaning of terms. *Unless the context requires otherwise,* in this act:

(1) *"Person" includes* individuals, partnerships, corporations, companies, societies, and associations.

(2) *"Weight," "measure," and "weights and measures"* mean all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliances and accessories associated with *those* instruments and devices. *The terms do* not include meters for the measurement of electricity, gas (natural or manufactured), or water when *they* are operated in a public utility system. *None* of the provisions of this act apply to *electricity, gas, or water* meters *operated in a public utility system* or to any appliances or accessories associated *with them.*

(3) *"Sell"* and "sale" *include, but are not limited to,* barter and exchange.

(4) *"Department" means* the *department of business regulation provided for in Title 82A, chapter 4.*

(5) "Intrastate commerce" *means* any commerce or trade that is begun, carried on, and completed wholly *in this* state, and the phrase "introduced into intrastate commerce" *defines* the time and place at which the first sale and delivery of a commodity is made *in this* state, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.

(6) "Commodity in package form" *means a* commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive, however, of any auxiliary shipping container enclosing packages that individually conform to the requirements of this act. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, *is a* commodity in package form.

(7) "Consumer package" or "package of consumer commodity" *means* a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.

(8) "Nonconsumer package" or "package of nonconsumer commodity" *means a* commodity in package form other than a consumer package, and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.

(9) "Barrel," when used in connection with fermented liquor, means a unit of thirty-one (31) gallons.

(10) "Ton" means a unit of two thousand (2,000) pounds avoirdupois weight.

(11) "Cord," when used in connection with wood intended for fuel pur-

poses, means the amount of wood that is contained in a space of one hundred twenty-eight (128) cubic feet when the wood is ranked and well stowed.

(12) "Weight," when used in connection with any commodity, means net weight."

Section 147. Section 90-156, R.C.M. 1947, is amended to read as follows:

"**90-156. State standards of weight and measure.** *Those* weights and measures in conformity with the standards of the United States as have been supplied to the state by the federal government or otherwise obtained by *this state* for use as state standards shall, when *they* have been certified as being satisfactory for use as such by the national bureau of standards, be the state standards of weight and measure. The state standards shall be kept in a safe and suitable place in the office or laboratory of the *department. They* shall not be removed from *there* except for repairs or for certification, and they shall be submitted at least once in ten *(10)* years to the national bureau of standards for certification."

Section 148. Section 90-159, R.C.M. 1947, is amended to read as follows:

"**90-159. General powers and duties of department.** The *department* shall have the custody of the state standards of weight and measure and of the other standards and equipment provided for by this act, and shall keep accurate records of *them.* The *department* shall enforce the provisions of this act. *It* shall *supervise* the weights and measures offered for sale, sold, or in use in *this* state."

Section 149. Section 90-160, R.C.M. 1947, is amended to read as follows:

"**90-160. Specific powers and duties of department — rules.** The *department* shall *adopt* from time to time reasonable *rules* for the enforcement of this act, which *rules* have the effect of law. These *rules* may include (1) schedules of fees for testing and certification, (2) standards of net weight, measure, or count, and reasonable standards of fill for any commodity in package form, (3) rules governing the technical and reporting procedures to be followed and the report and record forms and marks of approval and rejection to be used by *the department* in the discharge of *its* official duties, (4) exemptions from the sealing or marking requirements of section *90-166* with respect to weights and measures of *a* character or size that sealing or marking would be inappropriate, impracticable, or damaging to the apparatus *involved*, and (5) rules governing the voluntary registration of servicemen and service agencies. These *rules* shall include specifications, tolerances, and other technical requirements for weights and measures *subject to inspection and testing under* section *90-162*, designed to eliminate from use, without prejudice to apparatus that conforms as closely as practicable to the official standards, those (1) that are not accurate, (2) that are not reasonably permanent in their adjustment or will not repeat their indications correctly, or (3) that facilitate the perpetration of fraud. The specifications, tolerances, and other technical requirements for commercial weighing and measuring

devices, together with amendments thereto, as recommended by the national bureau of standards and published in national bureau of standards handbook 44 and supplements thereto, or in any publication revising or superseding handbook 44, *are* the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices of *this* state, except in so far as specifically modified, amended, or rejected by a *rule* issued by the *department. An* apparatus shall be *considered* to be "correct" when it conforms to all applicable requirements *adopted* as specified in this section. Other apparatus shall be *considered* to be "incorrect.""

Section 150. Section 90-161, R.C.M. 1947, is amended to read as follows:

"**90-161. Department — testing at state-supported institutions.** The *department* shall from time to time test all weights and measures used in checking the receipt or disbursement of supplies in every institution for the maintenance of which moneys are appropriated by the legislature, reporting *its* findings, in writing, to the executive officer of the institution concerned."

Section 151. Section 90-162, R.C.M. 1947, is amended to read as follows:

"**90-162. Department — general testing.** When not otherwise provided by law, the *department may* inspect and test, to ascertain if they are correct, all weights and measures kept, offered, or exposed for sale. *The department*, within a twelve-month period or less frequently if in accordance with a schedule issued by *it*, and as *often* as *it considers* necessary, *shall* inspect and test, to ascertain if they are correct, all weights and measures commercially used (1) in determining the weight, measurement, or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure, or of count, or (2) in computing the basic charge or payment for services rendered on the basis of weight, measure, or of count. *With* respect to single-service devices designed to be used commercially only once and to be then discarded and with respect to devices uniformly mass-produced, as by means of a mold or die, and not susceptible of individual adjustment, tests may be made on representative samples of *the* devices; and the lots of which *the* samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests on *the* samples. *An* itinerant peddler or hawker, using weights and measures, shall register his name and address with the *department*, in order that his equipment can be tested in accordance with the provisions of this law."

Section 152. Section 90-163, R.C.M. 1947, is amended to read as follows:

"**90-163. Department — investigations.** The *department* shall investigate complaints made to *it* concerning violations of this act. *It* shall, upon *its* own initiative, conduct *those* investigations *it considers* appropriate and advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations of this act and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions."

Section 153. Section 90-164, R.C.M. 1947, is amended to read as follows:

"**90-164. Department — inspection of packages.** The *department* shall, from time to time, weigh or measure and inspect packages or amounts of commodities kept, offered, or exposed for sale, sold, or in the process of delivery, to determine whether *they* contain the amounts represented and whether they be kept, offered, or exposed for sale or sold in accordance with law. When *those* packages or amounts of commodities are found not to contain the amounts represented, or are found to be kept, offered, or exposed for sale in violation of law, the *department* may order them off sale and may so mark or tag them as to show them to be illegal. In carrying out the provisions of this section, the *department* may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of the result obtained on a sample selected from and representative of *that* lot. *A* person *may not:*

(1) sell, or keep, offer, or expose for sale, in intrastate commerce, any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section unless *the* package or amount of commodity has been brought into full compliance with all legal requirements, or

(2) dispose of any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section and that has not been brought into compliance with legal requirements, in any manner, except with the specific approval of the *department.*"

Section 154. Section 90-165, R.C.M. 1947, is amended to read as follows:

"**90-165. Department — stop-use, stop-removal, and removal orders.** The *department may* issue stop-use orders, stop-removal orders, and removal orders with respect to weights and measures being, or susceptible of being, commercially used, and to issue stop-removal orders and removal orders with respect to packages or amounts or commodities kept, offered, or exposed for sale, sold, or in process of delivery, whenever in the course of enforcement of this act *it considers* it necessary or expedient to issue *those* orders. *A* person *may not* use, remove from the premises specified, or fail to remove from the premises specified, any weight, measure, or package or amount of commodity contrary to the terms of a stop-use order, stop-removal order, or removal order issued under this section."

Section 155. Section 90-166, R.C.M. 1947, is amended to read as follows:

"**90-166. Department — disposition of correct and incorrect apparatus.** The *department* shall approve for use, and seal or mark with appropriate devices, *those* weights and measures *which it* finds upon inspection and test to be "correct" as defined in section *90-160,* and shall reject and mark or tag as "rejected" *those* weights and measures *which it* finds, upon inspection or test, to be "incorrect" as defined in section *90-160,* but which in *its* best judgment are susceptible of satisfactory repair. *Sealing* or marking *are* not required with respect to *those* weights and measures *which* may be exempted therefrom by a *rule* of the *department* issued under section *90-160.* The *department* shall condemn, and may seize and destroy, weights and measures found to be incorrect that, in *its* best judgment, are not susceptible of satisfactory repair. Weights and measures that have been rejected may be confiscated and may be destroyed by the *department* if not corrected as required by section *90-169,* or if used or disposed of contrary to the requirements of section *90-169.*"

Section 156. Section 90-167, R.C.M. 1947, is amended to read as follows:

"**90-167. Department — police powers.** *In enforcing the provisions of this act or any other law pertaining to weights and measures, the department may, in the manner provided by law for peace officers, arrest violators, conduct searches and inspections, and seize for use as evidence incorrect or unsealed weights and measures or packages of commodities unlawfully used, possessed, offered, or exposed for sale or unlawfully sold.*"

Section 157. Section 90-169, R.C.M. 1947, is amended to read as follows:

"**90-169. Duty of owners of incorrect apparatus.** Weights and measures that have been rejected under the authority of the *department* shall remain subject to the control of the *department* until suitable repair or disposition *of them* has been made as required by this section. The *owner* of rejected weights and measures shall correct *them* within thirty (30) days or *a* longer period as may be authorized by the *department. In place* of this, *the owner* may dispose of *them,* but only in *a* manner specifically authorized by the *department.* Weights and measures that have been rejected *may* not again be used commercially until they have been officially re-examined and found to be correct, or until specific written permission for *that* use is issued by the *department,* or until the rejection tag has been removed and the rejected device repaired and placed in service by a person *properly* registered to perform *those* acts under a *rule* issued by the *department* for the registration of weights and measures servicemen and service agencies."

Section 158. Section 90-170, R.C.M. 1947, is amended to read as follows:

"**90-170. Method of sale of commodities — general.** Commodities in liquid form shall be sold only by liquid measure or by weight, and, except as otherwise provided in this act, commodities not in liquid form shall be sold only by weight, by measure of length or area, or by count. *Liquid* commodities may be sold by weight and commodities not in liquid form may be sold by count only if *those* methods give accurate information as to the quantity of commodity sold. *This* section *does* not apply:

(1) to commodities when sold for immediate consumption on the premises where sold,

(2) to vegetables when sold by the head or bunch,

(3) to commodities in containers standardized by a law of this state or by federal law,

(4) to commodities in package form when there exists a general consumer usage to express the quantity in some other manner,

(5) to concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel, crushed stone, and the like, when sold by cubic measure, or

(6) to unprocessed vegetable and animal fertilizer when sold by cubic measure.

The *department* may *adopt* reasonable *rules* necessary to assure that amounts of commodity sold are determined in accordance with good commercial practice and are so determined and represented as to be accurate and informative to all parties at interest."

Section 159. Section 90-171, R.C.M. 1947, is amended to read as follows:

"90-171. Method of sale of commodities — packages — declarations of quantity and origin — variations — exemptions. *(1)* Except as otherwise provided in this act, *a* commodity in package form introduced or delivered for introduction into or received in intrastate commerce, kept for the purpose of sale, or offered or exposed for sale in intrastate commerce, shall bear on the outside of the package definite, plain, and conspicuous declarations of*: (a)* the identity of the commodity in the package unless *it* can easily be identified through the wrapper or container, *(b)* the net quantity of the contents in terms of weight, measure, or count, and *(c)* in the case of any package kept, offered, or exposed for sale, or sold in any place other than on the premises where packed, the name and place of business of the manufacturer, packer, or distributor, as may be prescribed by *rules adopted* by the *department.*

(2) In connection with the declaration required under *subsection 1(b),* neither the qualifying term "when packed," *nor words* of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in a package *may* be used.

(3) Under subsection 1(b) the *department* shall, by *rule,* establish: (a) reasonable variations to be allowed, which may include variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure, (b) exemptions as to small packages, and (c) exemptions as to commodities put up in variable weights or sizes for sale intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer.

(4) The marking provisions of this section do not apply to unwrapped loaves of bread or to berries and small fruits, sold in conformance with the applicable provisions of this act."

Section 160. Section 90-173, R.C.M. 1947, is amended to read as follows:

"90-173. Method of sale of commodities — misleading packages. *A* commodity in package form *may not* be wrapped, *or* in a container made, formed, or filled, *so* as to mislead the purchaser as to the quantity of the contents of the package. *The* contents of a container *may* not fall below *a* reasonable standard of fill *which* may *be* prescribed for *that* commodity by the *department.*"

Section 161. Section 90-175, R.C.M. 1947, is amended to read as follows:

"90-175. Sale by net weight. *When a* commodity is sold on the basis of weight, the net weight of the commodity shall be employed, and all contracts concerning commodities shall be so construed."

Section 162. Section 90-178, R.C.M. 1947, is amended to read as follows:

"90-178. Bread. Each loaf of bread and each unit of a twin or multiple loaf of bread *produced* or procured for sale, kept, offered, exposed for sale, or sold, whether or not the bread is wrapped or sliced, shall weigh one-half (½) pound, one (1) pound, one and one-half (1 ½) pounds, or a multiple of one (1) pound, avoirdupois weight, within reasonable variations or tolerances that shall be *adopted* by *rules of* the *department. This* section *does* not apply to biscuits, buns, or rolls weighing eight (8) ounces or less, or to "stale bread" sold and expressly represented at the time of sale as such."

Section 163. Section 90-182, R.C.M. 1947, is amended to read as follows:

"90-182. Bulk deliveries sold in terms of weight and delivered by vehicle. When a vehicle delivers to an individual purchaser a commodity in bulk, and the commodity is sold in terms of weight units, the delivery shall be accompanied by a duplicate delivery ticket with the following information clearly stated, in ink or by means of other indelible marking equipment and, in clarity, equal to type or printing: (1) the name and address of the vendor, (2) the name and address of the purchaser, and (3) the net weight of the delivery expressed in pounds. *If* the net weight is derived from determinations of gross and tare weights, *the* gross and tare weights also shall be stated in terms of pounds. One of these tickets shall be retained by the vendor, and the other shall be delivered to the purchaser at the time of delivery of the commodity, or shall be surrendered, on demand, to the *department. If the department* desires to retain it as evidence, *it* shall issue a weight slip in *place of the ticket* for delivery to the purchaser. *If* the purchaser himself carries away his purchase, the vendor shall be required only to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of commodity delivered to him."

Section 164. Section 90-184, R.C.M. 1947, is amended to read as follows:

"90-184. Berries and small fruits. Berries and small fruits shall be offered and exposed for sale and sold by weight, or by measure in open containers having capacities of one-half (½) dry pint, one (1) dry pint, or one (1) dry quart."

Section 165. Section 90-186, R.C.M. 1947, is amended to read as follows:

"**90-186. Hindering or obstructing officer — penalties.** *A* person who *hinders* or *obstructs* in any way the *department*, in the performance of *its* official duties *is* guilty of a misdemeanor, and upon conviction shall be *fined* not less than twenty dollars *($20)* or more than two hundred dollars *($200)*, or *imprisoned* not more than three (3) months, or both *fined* and *imprisoned*."

Section 166. Section 90-187, R.C.M. 1947, is amended to read as follows:

"**90-187. Impersonation of officer — penalties.** *A* person who *impersonates* in any way *a person charged with enforcement of this act by the department*, by the use of *its* seal or a counterfeit of *its* seal, or in any other manner, *is* guilty of a misdemeanor, and upon conviction shall be *fined* not less than one hundred dollars *($100)* or more than five hundred dollars *($500)*, or *imprisoned* for not more than one (1) year, or both *fined* and *imprisoned*."

Section 167. Section 90-188, R.C.M. 1947, is amended to read as follows:

"**90-188. Offenses and penalties.** (1) *A person may not:*

(a) Use or *possess* for the purpose of using for *a* commercial purpose specified in section *90-162*, sell, offer, or expose for sale or hire, or *possess* for the purpose of selling or hiring, an incorrect weight or measure or any device or instrument used to or calculated to falsify any weight or measure;

(b) Use, or *possess* for the purpose of current use for *a* commercial purpose specified in section *90-162*, a weight or measure that does not bear a seal or mark specified in section *90-166*, unless *that* weight or measure has been exempted from testing by section *90-162* or by a *rule* of the *department* issued under section *90-160*, or unless the device has been placed in service as provided by a *rule* of the *department* issued under section *90-160*. *A* person *using* weighing or measuring devices subject to this act must report to the *department*, in writing, the number and location of *the* weighing or measuring device and must promptly report the installation of any new weighing or measuring device;

(c) Dispose of *a* rejected or condemned weight or measure in a manner contrary to law or *rule;*

(d) Remove from *a* weight or measure, contrary to law or *rule*, any tag, seal, or mark placed *on it* by the appropriate authority;

(e) Sell, or offer or expose for sale, less than the quantity he represents of *a* commodity, thing, or service;

(f) Take more than the quantity he represents of *a* commodity, thing, or service, when, as buyer, he furnishes the weight or measure by means of which the amount of the commodity, thing, or service is determined;

(g) Keep for the purpose of sale, advertise, or offer or expose for sale, or sell *a* commodity, thing, or service in a condition or manner contrary to law or *rule;*

(h) Use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position which may reasonably be assumed by a customer;

(i) Violate *a* provision of this act or of the *rules adopted* under this act for which a specific penalty *is* not prescribed.

(2) A person who violates, or who knowingly allows an employee or agent to violate, this section is guilty of a misdemeanor and, upon a first conviction, shall be fined not less than twenty dollars ($20) or more than two hundred dollars ($200), or imprisoned for not more than three (3) months, or both fined and imprisoned. Upon a second or subsequent conviction, he shall be fined not less than fifty dollars ($50) or more than five hundred dollars ($500), or imprisoned for not more than one (1) year, or both fined and imprisoned."

Section 168. Section 90-189, R.C.M. 1947, is amended to read as follows:

"**90-189. Injunction.** The *department may* apply to any court of competent jurisdiction for, and *that* court upon hearing and for cause shown may grant, a temporary or permanent injunction restraining *a* person from violating any provision of this act."

Section 169. Section 90-190, R.C.M. 1947, is amended to read as follows:

"**90-190. Presumptive evidence.** For the purposes of this act, proof of the existence of a weight or measure or a weighing or measuring device in or about any building, enclosure, stand, or vehicle in which or from which is shown that buying or selling is commonly carried on, *is*, in the absence of *credible* evidence to the contrary, presumptive proof of the regular use of *that* weight or measure or weighing or measuring device for commercial purposes and of *the* use by the person in charge of *the* building, enclosure, stand, or vehicle."

Section 170. Wherever the words "superintendent," "superintendent of banks," or "state superintendent of banks" appear in sections 5-205, 5-206, 5-207, 5-209, 5-211, 5-510, 5-704, 5-803, 5-908, 5-909, 5-1006, 5-1014, 5-1020, 5-1025, 5-1026, 5-1027, 5-1028, 5-1029, 5-1030, 5-1032, 5-1036, 5-1046, 5-1130, 5-1204, 7-104, 7-105, 7-107, 7-113.1, 7-124, 7-128, 7-129, 7-137, 7-151, 74-603, the word "department" is substituted therefor.

Section 171. Wherever the words "superintendent of banks" appear in section 5-1021, the words "state banking board" are substituted therefor.

Section 172. Wherever the words "consumer loan commissioner" or "commissioner" appear in sections 47-205, 47-208, 47-209, 47-212, 47-216, 47-217, 47-221, 47-224, 47-226, 47-227, the word "department" is substituted therefor.

Section 173. Wherever the words "commissioner of agriculture" or "commissioner" appear in sections 60-203.3, 60-204, 60-205, 60-210, 60-211, 60-212, 60-213, 60-214, the word "department" is substituted therefor.

Section 174. Wherever the word "board" appears in sections 51-113, 51-114, 51-115, the word "department" shall be substituted therefor.

Section 175. The publishers of the Revised Codes of Montana, 1947, are directed, under the supervision of the Supreme Court of Montana, to make the substitutions enumerated in sections 170, 171, 172, 173, and 174 of this act when reprinting sections or portions of sections of the Revised Codes in either supplements to or replacement volumes for the Revised Codes.

Section 176. Sections 5-108, 5-601 through 5-603, 5-606, 5-608, 5-902, 5-1009 through 5-1011, 5-1013, 5-1119 through 5-1121, 5-1301 through 5-1311, 7-152, 27-404, 27-418, 27-420, 27-425, 27-428, 27-429, 47-225, 82-1001 through 82-1011, 82A-402, 82A-403, 90-155, 90-158, 90-168, 90-193, 90-194, 90-621 are repealed.

Approved April 14, 1975.

CHAPTER NO. 432

AN ACT TO AMEND SECTIONS 75-7104, 75-7127, AND 75-7129, R.C.M. 1947, TO PROVIDE THAT THE EIGHT PERCENT (8%) DEBT LIMIT ON THE ISSUANCE OF SCHOOL DISTRICT BONDS SHALL NOT PERTAIN TO SPECIAL IMPROVEMENT DISTRICT OBLIGATIONS; TO PROVIDE FOR PAYMENT OF SPECIAL IMPROVEMENT DISTRICT ASSESSMENTS BY SCHOOL DISTRICTS FROM THE DEBT SERVICE FUND OF THE SCHOOL DISTRICT RATHER THAN FROM THE GENERAL FUND OF THE SCHOOL DISTRICT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-7104, R.C.M. 1947, is amended to read as follows:

"**75-7104. Limitations on amount of bond issue.** (1) The maximum amount for which each school district shall become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is *eight percent (8%)* of the assessed value of the taxable property therein as ascertained by the last completed assessment for state, county, and school taxes previous to the incurring of such indebtedness. *The eight percent (8%) maximum, however, shall not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district.* All bonds issued in excess of such amount shall be null and void, except as provided in subsection (2).

When the total indebtedness of a school district has reached the *eight percent (8%)* limitation prescribed in this section, such school district shall have the power and authority to pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this title.

Whenever bonds are issued for the purpose of refunding bonds, any moneys to the credit of the debt service fund for the payment of the bonds to be refunded shall be applied towards the payment of such bonds and the refunding bond issue shall be decreased accordingly.

(2) In the case of a school district within which a new major industrial facility which seeks to qualify for taxation as class seven (7) property under section 84-301, R.C.M. 1947, is being constructed or is about to be constructed, the school district may require, as a precondition of the new major industrial facility qualifying as class seven (7) property, that the owners of the proposed industrial facility enter into an agreement with the school district concerning the issuing of bonds in excess of the *eight percent (8%)* limitation prescribed in subsection one (1). Under such an agreement, the school district may, with the approval of the voters, issue bonds which exceed the limitation prescribed in subsection one (1) by a maximum of *eight percent (8%)* of the estimated assessed value of the taxable property of the new major industrial facility when completed. The estimated assessed value of the taxable property of the new major industrial facility shall be computed by the department of revenue when requested to do so by a resolution of the board of trustees of the school district, and copy of the department's statement of estimated assessed value shall be printed on each ballot used to vote on a bond issue proposed under this subsection.

Pursuant to the agreement between the new major industrial facility and the school district, and as a precondition to qualifying as class seven (7) property, the new major industrial facility and its owners shall, in addition to such taxes as may be imposed by the school district on property owners generally pay so much of the principal and interests on the bonds provided for under this subsection as shall represent payment on an indebtedness in excess of the limitation prescribed in subsection one (1). After the completion of the new major industrial facility and when the indebtedness of the school district no longer exceeds the limitation prescribed in subsection one (1), the new major industrial facility shall be entitled, after all the current indebtedness of the school district has been paid, to a tax credit over a period of no more than twenty (20) years which credit shall, as a total amount, be equal to the amount by which the facility paid the principal and interest of the school district's bonds in excess of its general liability as a taxpayer within the district.

A major industrial facility is a facility, subject to the taxing power of the school district, whose construction or operation will increase the population of the district so as to impose a significant burden upon the resources of the district and to require construction of new school facilities. A significant burden is an increase in ANB of at least twenty percent (20%) in a single year."